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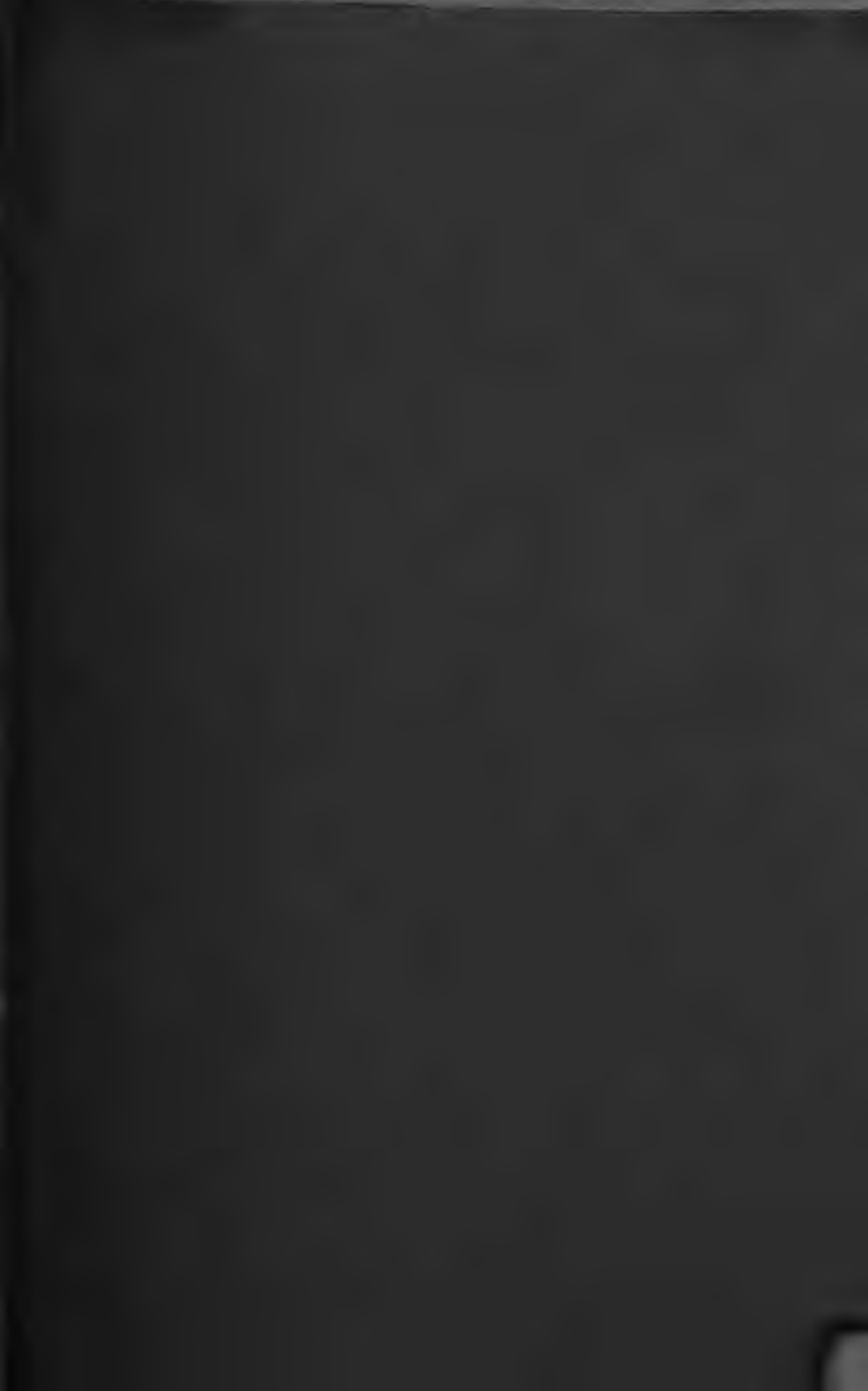
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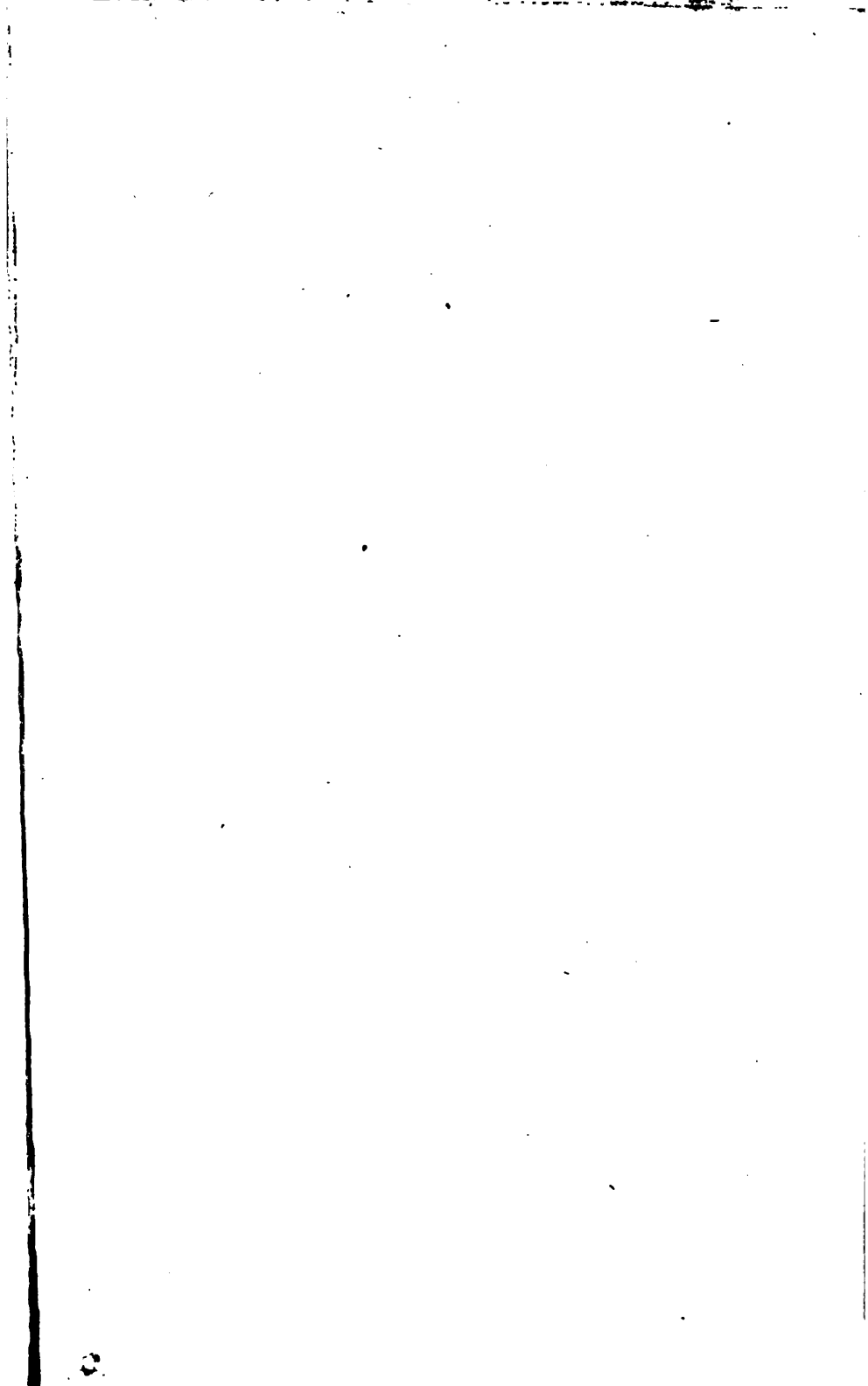


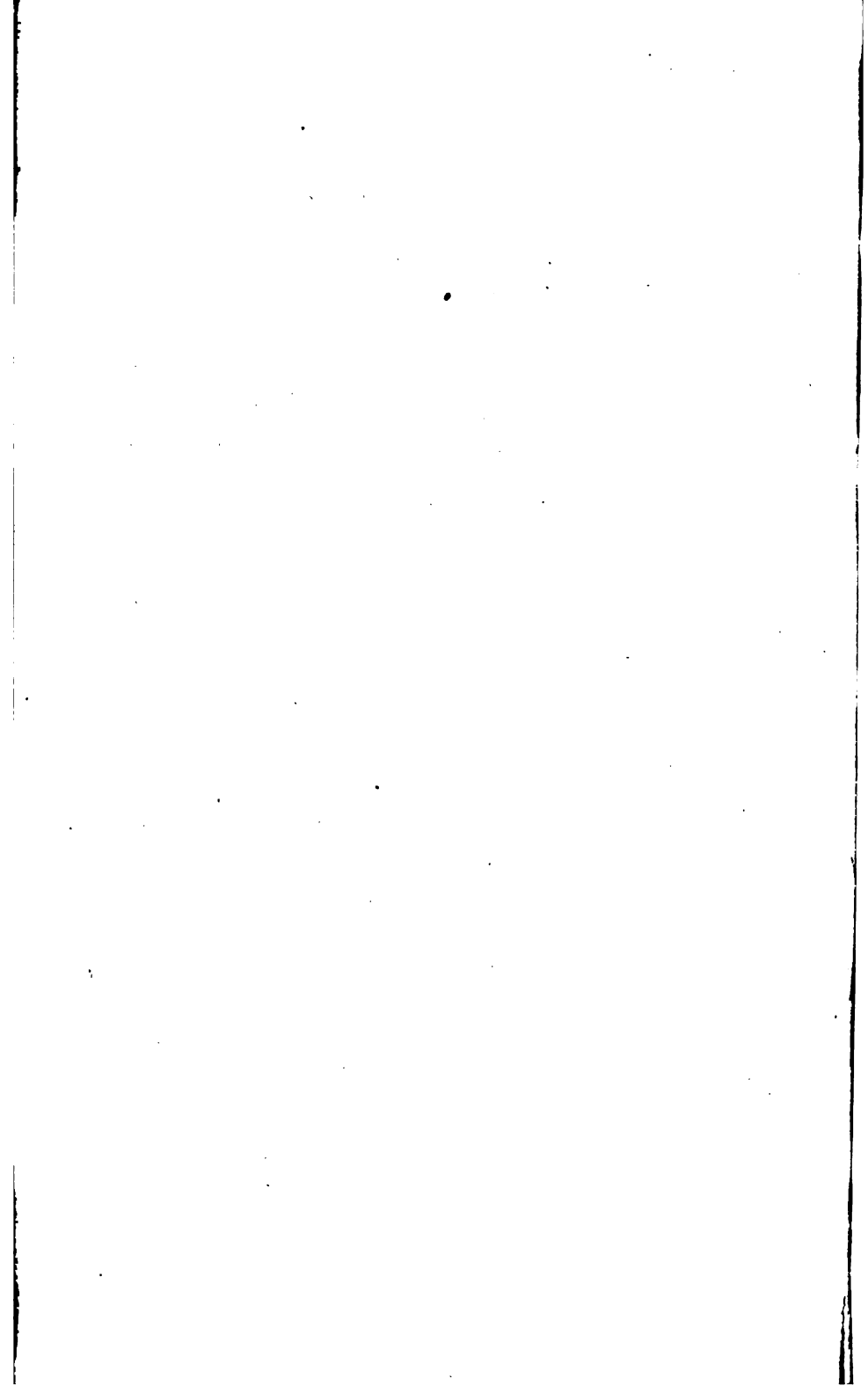


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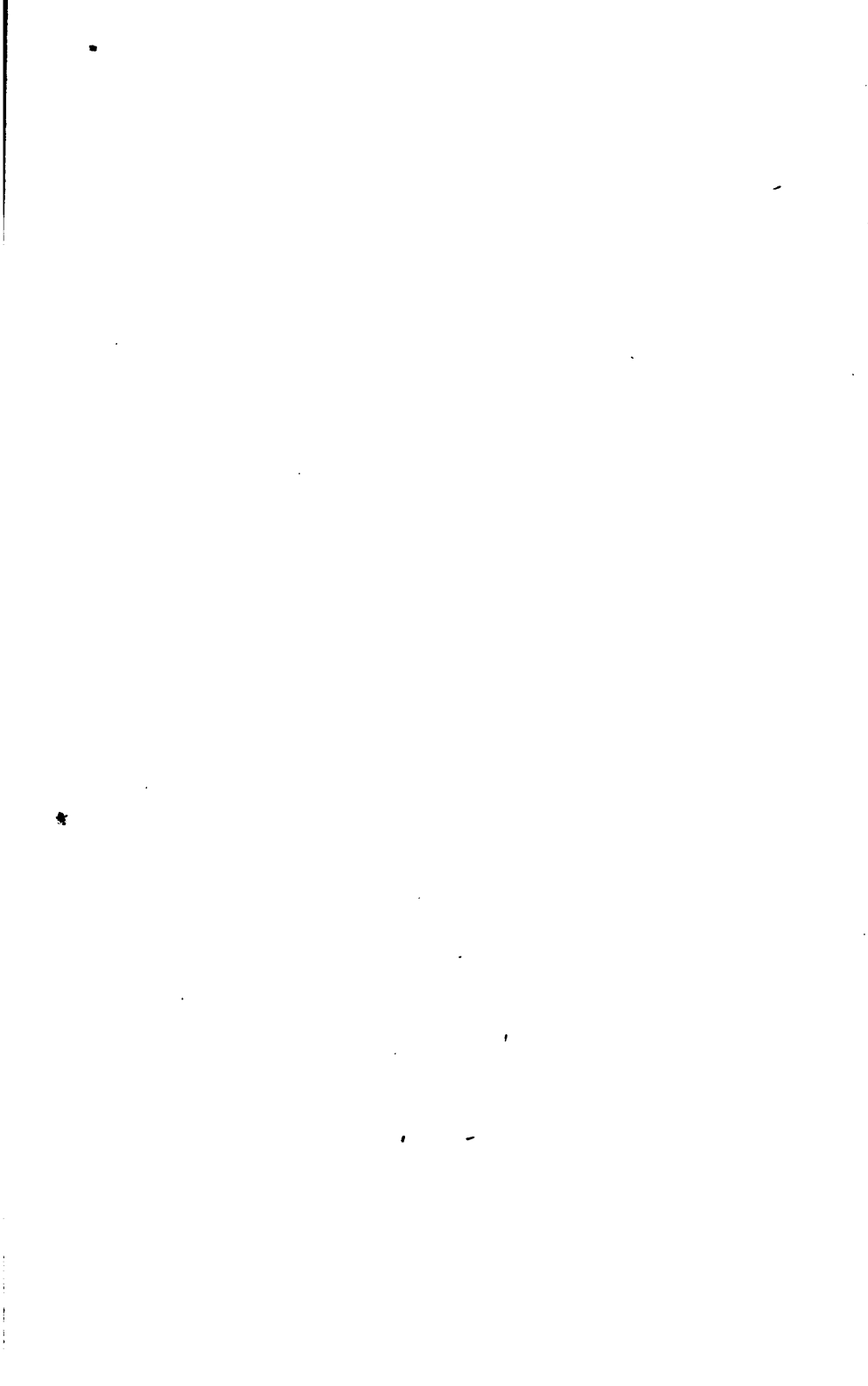
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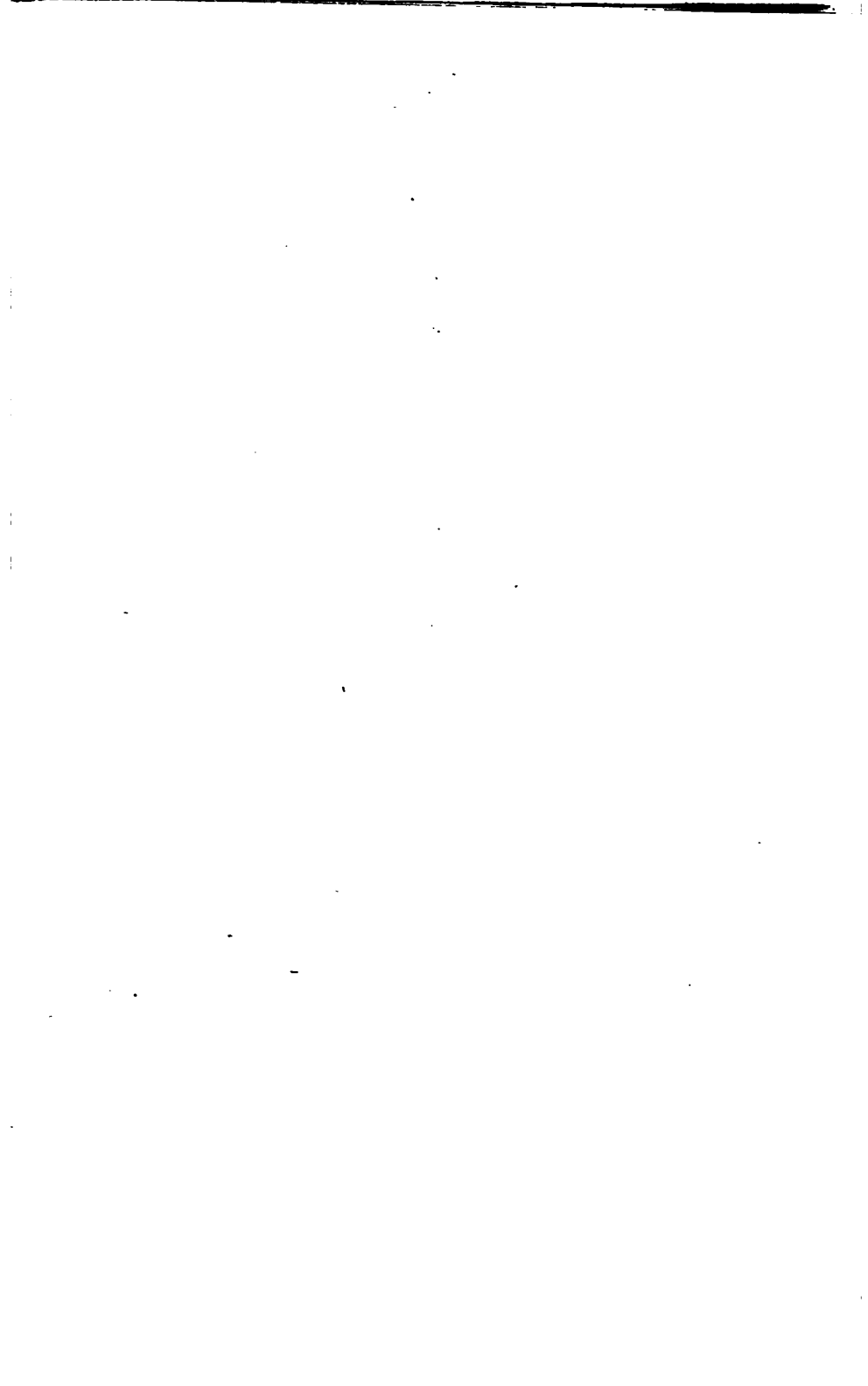
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BRIEF
HISTORICAL NOTICES,

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BRIEF
HISTORICAL NOTICES
OF
THE INTERFERENCE OF THE CROWN
WITH
THE AFFAIRS
OF
THE ENGLISH UNIVERSITIES.

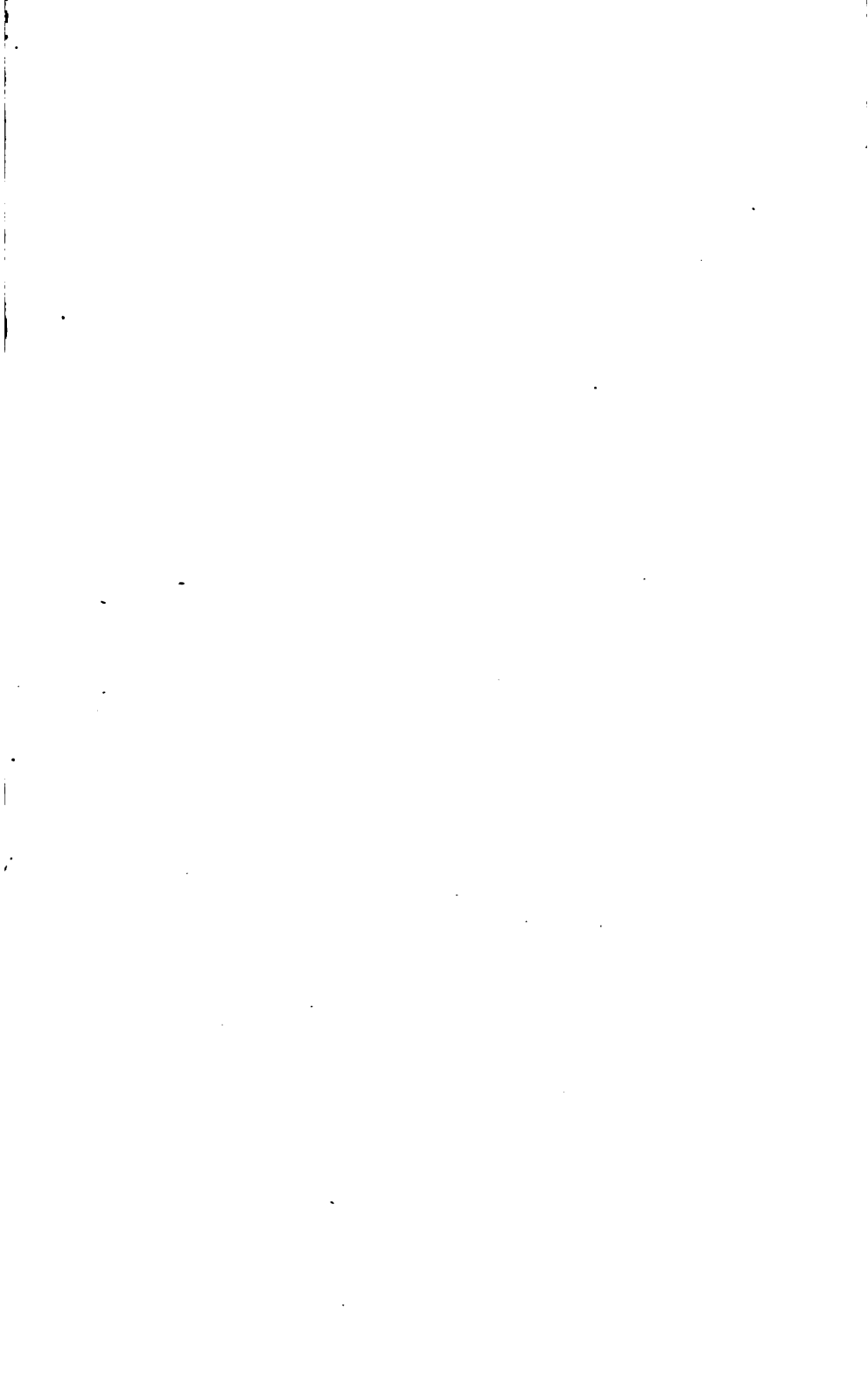
BY
GEORGE ELWES CORRIE, B.D.,
FELLOW AND TUTOR OF ST CATHARINE'S HALL,
AND
NORRISIAN PROFESSOR OF DIVINITY IN THE UNIVERSITY OF CAMBRIDGE.

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M.DCCC.XXXIX.

The writer of these pages having in connection with several of the several cases of students who have been in the hands of the several and College could not but observe that much uncertainty prevailed respecting the authority by which such changes could be legally effected. There seeming to be at the same time a general leaning toward the opinion that the changes in question would, in some way or other, have to be effected by the intervention of the Crown, it occurred to the writer that light would probably be thrown upon that opinion by an examination of the circumstances connected with some of those interferences of the Crown with the affairs of the Universities which took place in former times. The following pages contain the results of that examination, so far as the time which happened to be at the command of the writer has permitted him to carry it. Yet brief and imperfect as these Historical Notices are, it is hoped they may serve





P R E F A C E.

THE writer of these pages having, in common with others, had his attention turned to contemplated changes in the Statutes of our Universities and Colleges, could not but observe that much uncertainty prevailed respecting the authority by which such changes could be legally effected. There seeming to be, at the same time, a general leaning toward the opinion, that the changes in question would, in some way or other, have to be effected by the intervention of the Crown, it occurred to the writer, that light would probably be thrown upon that opinion, by an examination of the circumstances connected with some of those interferences of the Crown with the affairs of the Universities, which took place in former times. The following pages contain the results of that examination, so far as the time, which happened to be at the command of the writer, has permitted him to carry it. Yet brief and imperfect as these Historical Notices are, it is hoped they may serve

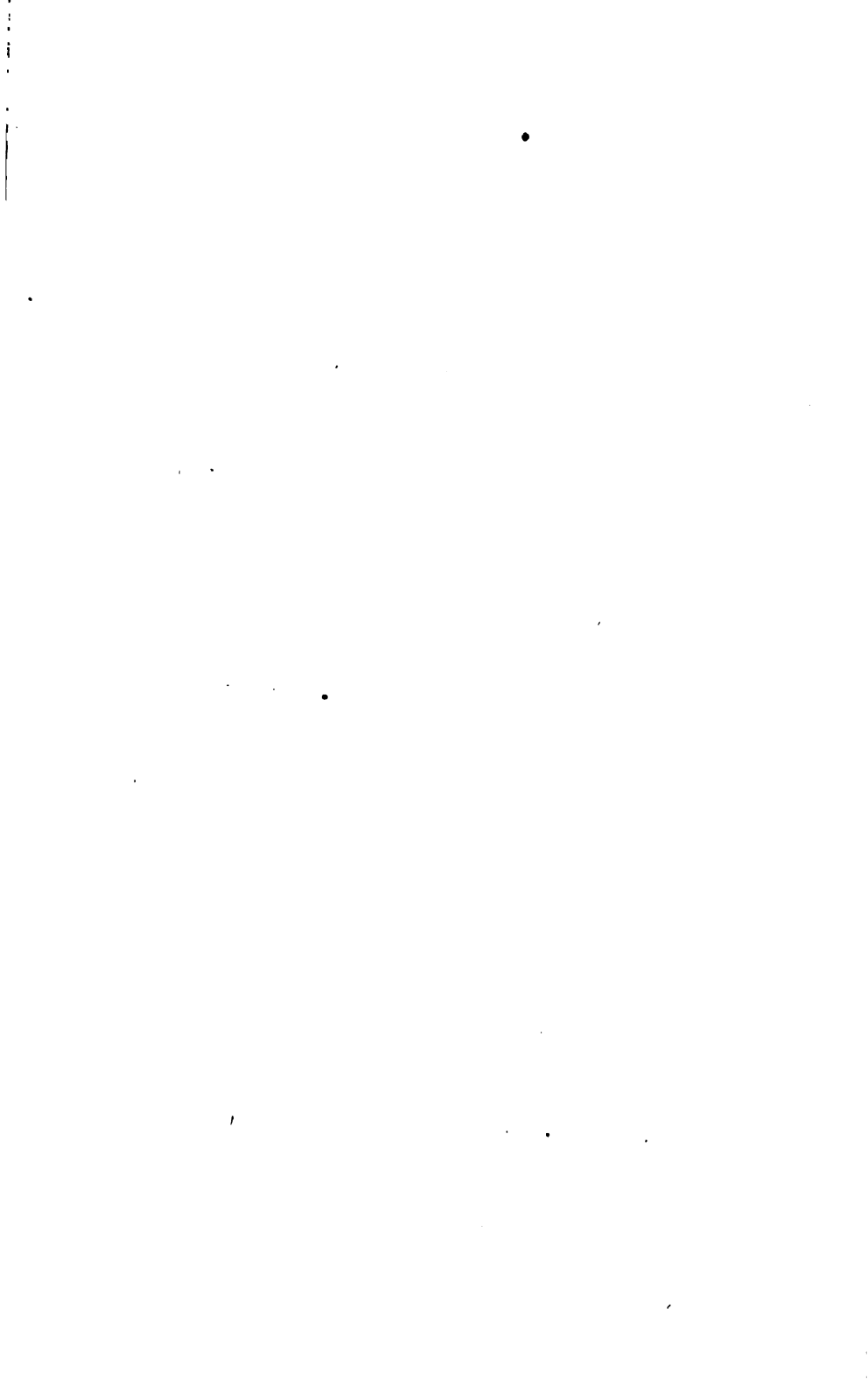
to call attention to a subject of some importance. At least, it seems to the writer, that, in these days, the interference, and authority of the Crown, in all matters relating to our Ecclesiastical and Literary Institutions, cannot be too narrowly scrutinised, or too sparingly employed. For we have not now to do with the Sovereign, as possessing an independent legislative existence, as in circumstances to shew a sincere attachment to our Church and Universities, and as powerful to uphold them; but, as the State servant of that Prime Minister who may happen to command a majority in the Commons' House of Parliament; and, as being, therefore, oftentimes obliged, however personally unwilling, to exert a hostile influence against every Institution that we have been accustomed to revere. Although, therefore, all who entertain an unfeigned attachment to Monarchy must ever regard the Sovereign personally as an object of loyal and dutiful reverence, it seems to be not the less necessary to be well acquainted with the limits which the Law has assigned to the Royal authority, because a blind acquiescence in the illegal exercise of the Kingly power would only embolden an unscrupulous Minister, to use the Prerogatives of the Crown against the Religion and Liberties of his Country.





The writer has to express his obligations to the Dean of Bristol, for the ready access, which that Gentleman procured for him, to the Parker MSS. in Corpus Christi College Library; as, also, to Dr Adams of Sidney Sussex College, and The Master of St John's College, for some particulars connected with the Statutes of their respective Societies, which they were kind enough to supply.





BRIEF HISTORICAL NOTICES,

&c.

ALTHOUGH the Universities were anciently regarded as Religious Corporations, they were yet, from various causes, considered to be exempt from the jurisdiction of the local Ecclesiastical Ordinary¹. By the passing, therefore, of the Act of Parliament (25 Hen. VIII. c. 21.) which declared the Pope's usurped power to be abolished in this country, the Universities, with other exempt places, would naturally have become subject to the visitation of the Bishop of the Diocese, if it had not been specially provided

“ That this act, or any thing therein contained, shall not hereafter be expounded to the derogation or taking away of any liberties, privileges, or jurisdiction of places exempt :”

provision, also, being at the same time made for the visitation of those places by the King's commission.

But this consigning over to the King of “ Monasteries, Abbeys, Priories, Colleges or other Religious Places,” which were considered to be

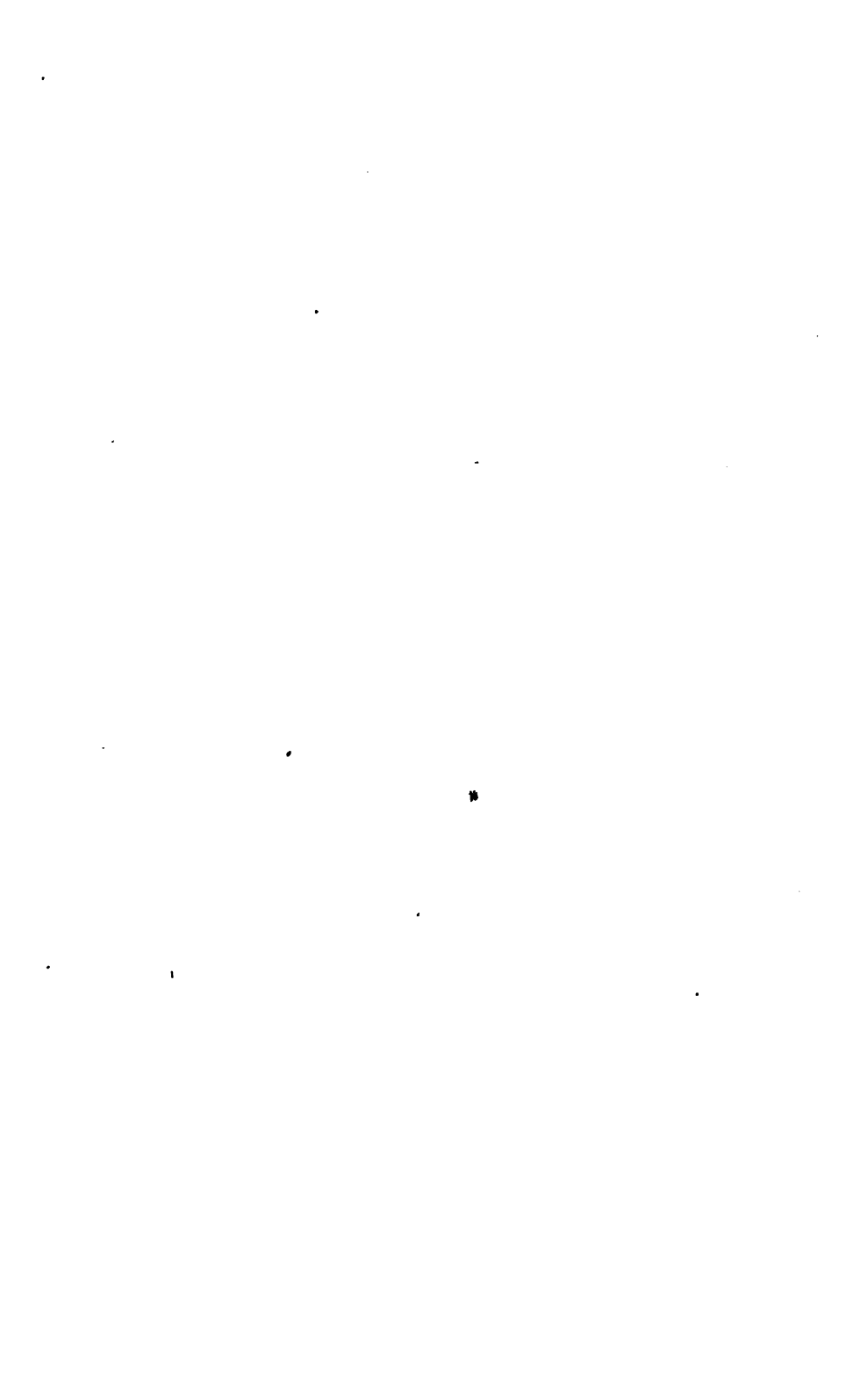
¹ Rushworth, *Historical Collections*, Part ii. pp. 324, et seq. *The Privileges of the University of Oxford in point of Visitation*, &c, pp. 2, et seq. Baker, *MSS.* Vol. vi. p. 157. et seq. *Collection of Letters, &c. from the MS. Library of Corpus Christi College, &c.* Edited by J. Lamb, D.D. p. 12.

exempt from ordinary visitation did not satisfy Henry VIII. He was ready enough to visit them, but the event proved that he had no notion of affording them "redress and confirmation." There-
 1534. fore in the following year, this Sovereign and his popish Parliament passed an Act of far more extensive operation (26 Hen. VIII. c. 1.) entitled, "The King's Grace to be authorized Supreme Head." By this Act it was conceded to the King, his heirs, and successors, kings of this realm, that, among other things, he should have

"full power and authority from time to time to visit, repress, redress, reform, order, correct, restrain and amend all such errors, heresies, abuses, offences, contempts and enormities, whatsoever they be, which, by any manner, spiritual authority or jurisdiction, ought or may lawfully be reformed; any usage, custom, foreign laws, foreign authority, prescription, or any other thing or things to the contrary hereof notwithstanding."

The history of those times will shew the almost unlimited power to visit, and change, Ecclesiastical Institutions, which this Act conferred on the Sovereign. For our purpose, it will only be necessary to note the circumstance that it was under the authority of this statute that the King constituted Cromwell his Vicar-general, and Vice-
 1535. gerent; and that Cromwell deputed Visitors to both the Universities. This took place in 1535.

In Oxford those Visitors seem to have instituted lectures of various kinds; and to have interfered for the visitation, and regulation of every College. Certain Royal Injunctions, also, were, in the first instance, transmitted to Cambridge, which had



reference chiefly to reforms and changes in the studies of that University; to the renunciation of the Papal Supremacy, and to the acknowledging of that of the King. Every statute of the University, or of any particular College, Hall, House, or Hostel, which might happen to be in any way repugnant to the King's Injunctions, was pronounced, and held to be void: and, finally, there was reserved to Cromwell personally, or to his Surrogate, the power to issue any further Injunctions, and to examine Deeds of Foundations, Statutes, Charters, &c. as might seem convenient, or desirable. On the strength of this supreme delegated authority, Cromwell afterwards empowered Dr Legh to visit Cambridge; who, in his turn, also issued Injunctions, and demanded obedience to them in the name of the King: "auctoritate regia nobis in hac parte commissa stricte præcipimus atque mandamus¹." This Dr Legh was entitled to do; since independent of any authority which he derived from the Royal Injunctions, to which reference has been made, there was, also, a Commission in existence, which gave certain powers to such agents as Cromwell had selected for Ecclesiastical purposes. The Commission in question authorised them, as Cromwell's deputies, to visit, when, and as often as they thought proper, all Metropolitcal, Cathedral, and Collegiate Churches, and Religious Foundations

¹ Strype, *Ecclesiast. Memorials*, Vol. i. Part i. pp. 321, et seq. Oxf. Edit. Johnston, *The King's Visitation Power asserted, &c.* p. 194. *Stat. Acad. Cant.* pp. 134, et seq. Fuller, *History of the University of Cambridge*, pp. 109, et seq. Collier, *Eccles. Hist.* Vol. II. p. 109. *Note.* Whenever reference is made to any of Strype's historical Works, it is to the Oxford 8vo. Edition.

of every description, exempt or not exempt:—to punish, correct, and remove offending members of those Foundations;—to sequester revenues, or to order their expenditure:—to frame, and cause to be observed, Statutes, Ordinances, and Injunctions, as occasion should render advisable:—in a word, to perpetrate any act of caprice or tyranny, which might suggest itself to the depravity of the human heart¹.

Under the auspices of Dr Legh, therefore, the oath of submission to the King as “Supreme Head” was required to be taken and subscribed by the members of the different Colleges: the Vice-Chancellor and Proctors, and all Heads of Colleges, Halls, and Hostels, were required also to deliver up their Charters, Deeds of Foundations, Statutes, Pontifical Bulls, and all other Popish Muniments, into the hands of Cromwell, the Visitor-general; and then to wait his pleasure. As a set-off to these unwelcome proceedings, it was further ordered that a public Lecture should be established in the University, either for Greek or Hebrew, as the members of the body should think desirable; but then they had to support the lecture at their own expence².

1545. About ten years subsequent to this Visitation, was passed “An Act for dissolution of Colleges,” (37 Hen. VIII. c. 4.) which empowered the King, by Commissioners, to enter Colleges and take possession of them. Under the authority of this Act, therefore, Dr Matthew Parker, Master of Corpus Christi,

¹ Wilkins, *Concilia*, Vol. III. p. 784. Burnet, *Reformat.* Vol. II. p. 417, &c. Oxf. Edit.

² Fuller, *History of the University of Cambridge*, ubi *supr.*



John Redman, Master of Trinity, and William Meye, Master of Queens' College, were appointed to visit Cambridge and its Colleges. Their Commission was dated Jan. 16, 1545; and after reciting the Act just mentioned, it gives them power to call before them Heads and Fellows of Colleges, to peruse Foundations, Statutes, and Ordinances; and obtain information, in any way they could, respecting the value, and locality, of every kind of property of which, each, and all the Colleges, might be possessed. The object of this Commission was wholesale confiscation, under the pretence of taking "souche ondelayde order with" the University as should "encourage the students to continue there studies." This we learn from interesting contemporary documents in the handwriting of archbishop Parker; which also inform us, that it was only by the address of the friends of the Universities that the confiscation project was defeated³.

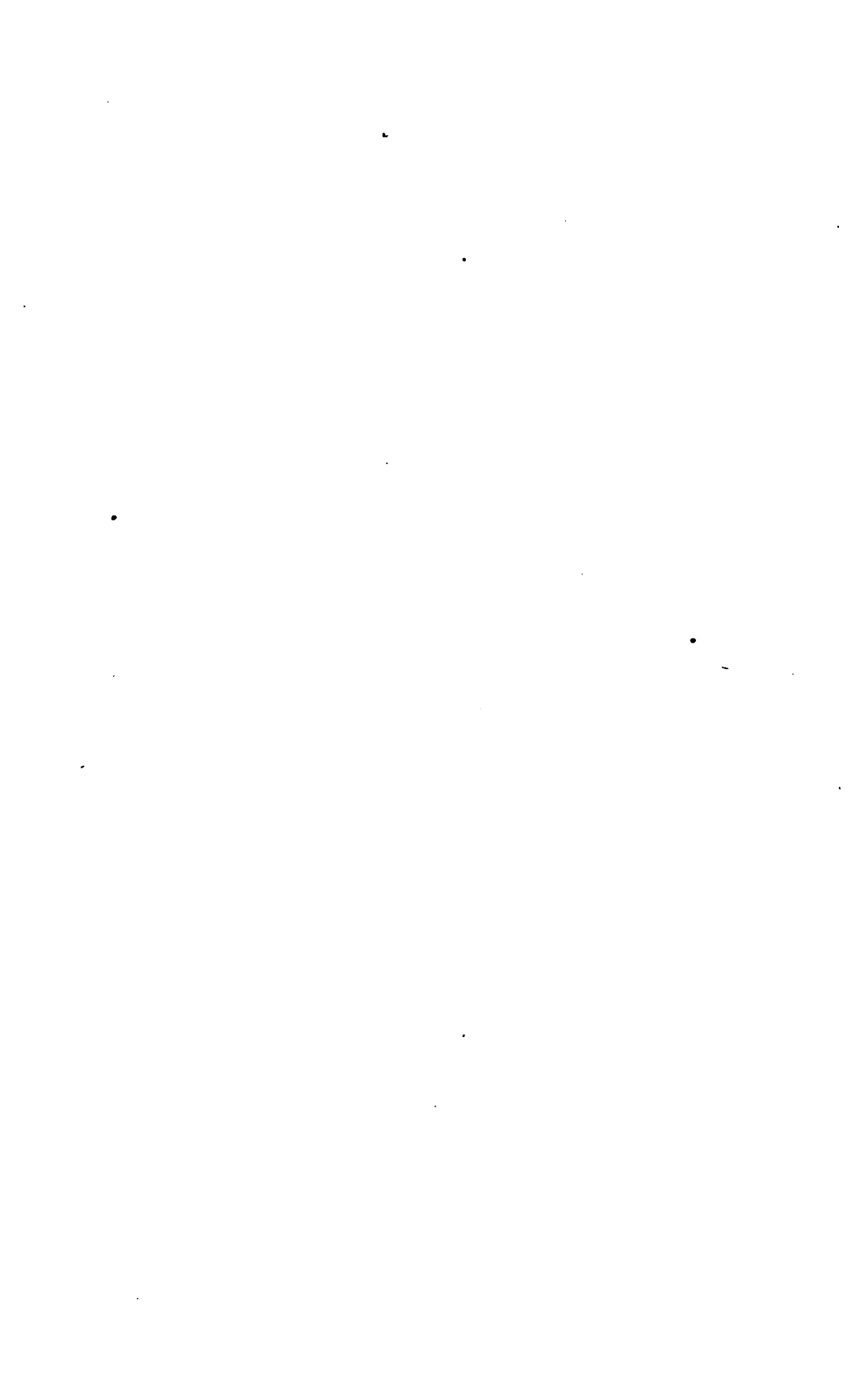
On the accession of King Edward VI. an Act 1547.
(1 Edw. VI. c. 14.) was passed, modifying and extending the provisions of that just mentioned, and, among other things, exempting the endowments of Colleges in the two Universities from confiscation; retaining, however, to the King the power to change the names of such Chantries, and "the foundations of the same" as might be in the Universities.

But in the next year a Commission was issued 1548.
for a Royal Visitation of the University of Cam-

³ *Collection of Letters, &c.* from the MS. Library of Corpus Christi College, pp. 58, 59.

bridge, although the Visitors did not enter on their labours till 1549. The terms of the Commission authorized the Visitors to enquire generally into the state of the Colleges—to punish criminals and delinquents, by deprivation or sequestration of their emoluments:—to compel the contumacious and rebellious to obedience, by ecclesiastical censures, imprisonments, recognisances, and other means provided by the laws:—to remove inefficient or unworthy officers and members of Colleges, and to substitute others in their places:—to unite two or more Colleges; or to dissolve them for the purpose of changing the object of their foundation, or to establish new ones:—to abolish Statutes, Ordinances, and Customs, which should happen to be repugnant to such Injunctions and Statutes, as the Visitors might think fit to give. It was under the authority of this Commission that new Statutes were given to the University, and that the Statutes of many, if not of all the Colleges were altered and revised: the power to grant the Commission itself being derived from 26 Hen. VIII. c. 1., which remained in force all King Edward's reign. The only material circumstance that remains to be noticed, therefore, in this place is, the assumption of the Royal dispensing power with which the Commission closes:—"aliquo alio statuto, &c. aut aliqua alia re, causâ vel materiâ quacumque in aliquo non obstantibus¹."

¹ Strype, *Life of Cranmer*, Vol. i. p. 290. *Eccl. Mem.* Vol. ii. Part i. p. 328. *Life of Parker*, Vol. i. p. 51. Burnet, *Hist. Reformer*. Vol. ii. pp. 222, et seq. Rymer, *Fœdera*, Tom. xv. pp. 178, &c. Johnston, *The King's Visitatorial Power asserted*, &c. pp. 296, et seq.



On the 8th of May following (3 Edw. VI.) a Commission was issued for a Royal Visitation of Oxford. The Commissioners had given to them an authority in all respects similar to that committed to the Visitors of the University of Cambridge; and made a similar use of it². 1549.

On the accession of queen Mary, she issued her mandate to Bishop Gardiner, Chancellor of the University of Cambridge, authorising him to restore the Statutes, Foundations, &c. to the state in which they existed previously to the Reformation, "notwithstanding Injunctions or new Ordinances made, set forth, or delivered by any Visitor or other" since the death of King Henry VIII.³ In consequence, Bishop Gardiner sent his chaplain with Instructions to every College: the Masters of some Colleges were ejected, and other like proceedings taken. All this, however, was effected under the authority of 26 Hen. VIII. c. 1., which was not repealed until 1 and 2 Phil. and Mary, c. 8. 1553.

After the repeal of the Act just mentioned, a Visitation of both Universities took place, by the authority of Cardinal Pole, as *Pope's legate*. This happened in the year 1556⁴. 1554-5.

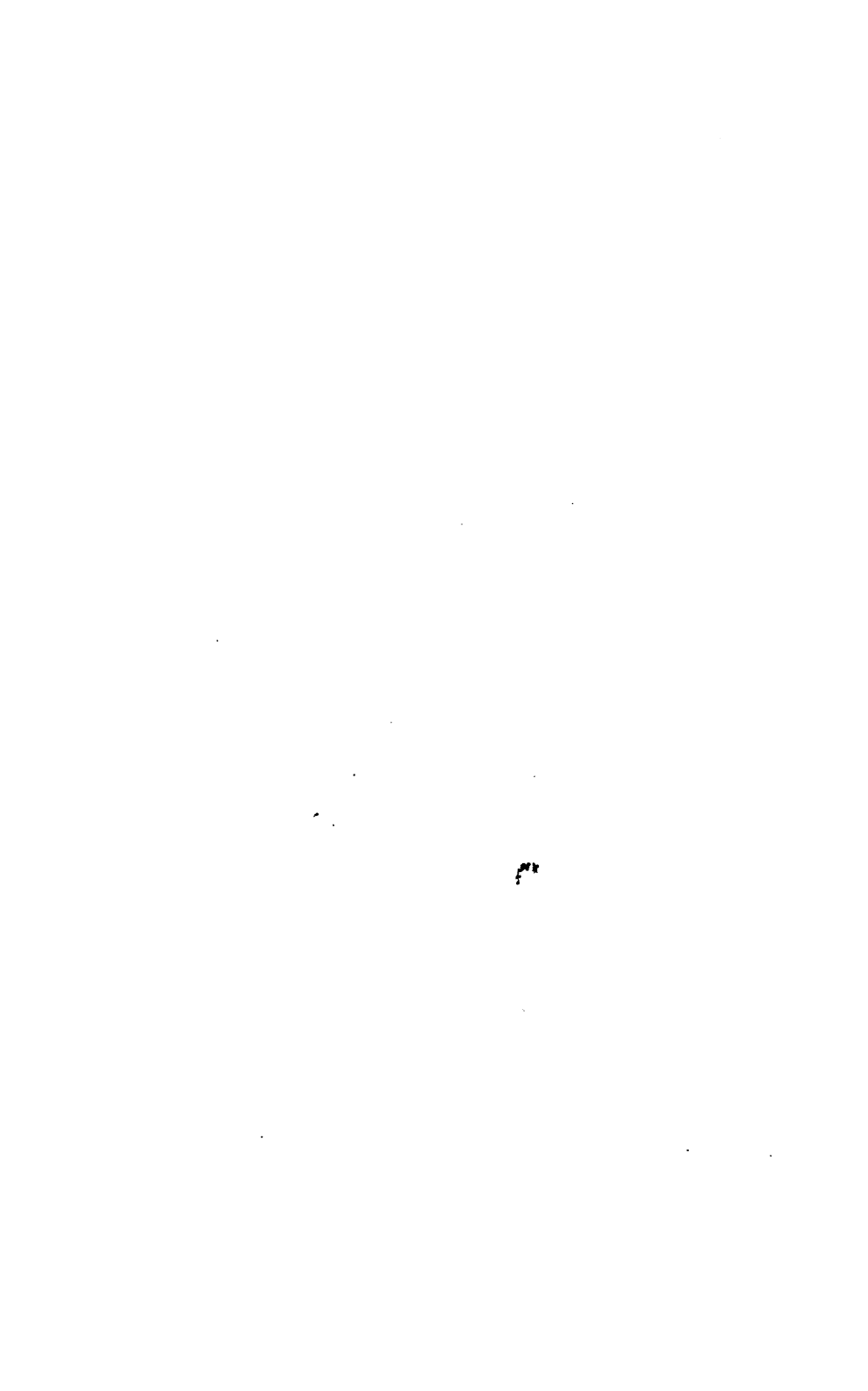
² Wood, *Hist. and Antiq. Univ. Oxon.* Lib. I. p. 269. Johnston, *The King's Visitatorial Power, &c.* p. 196, &c. Ayliffe, *State of Oxford*, Vol. II. Appendix, p. cxiii. Rymer, *Fœdera*, Tom. xv. p. 188.

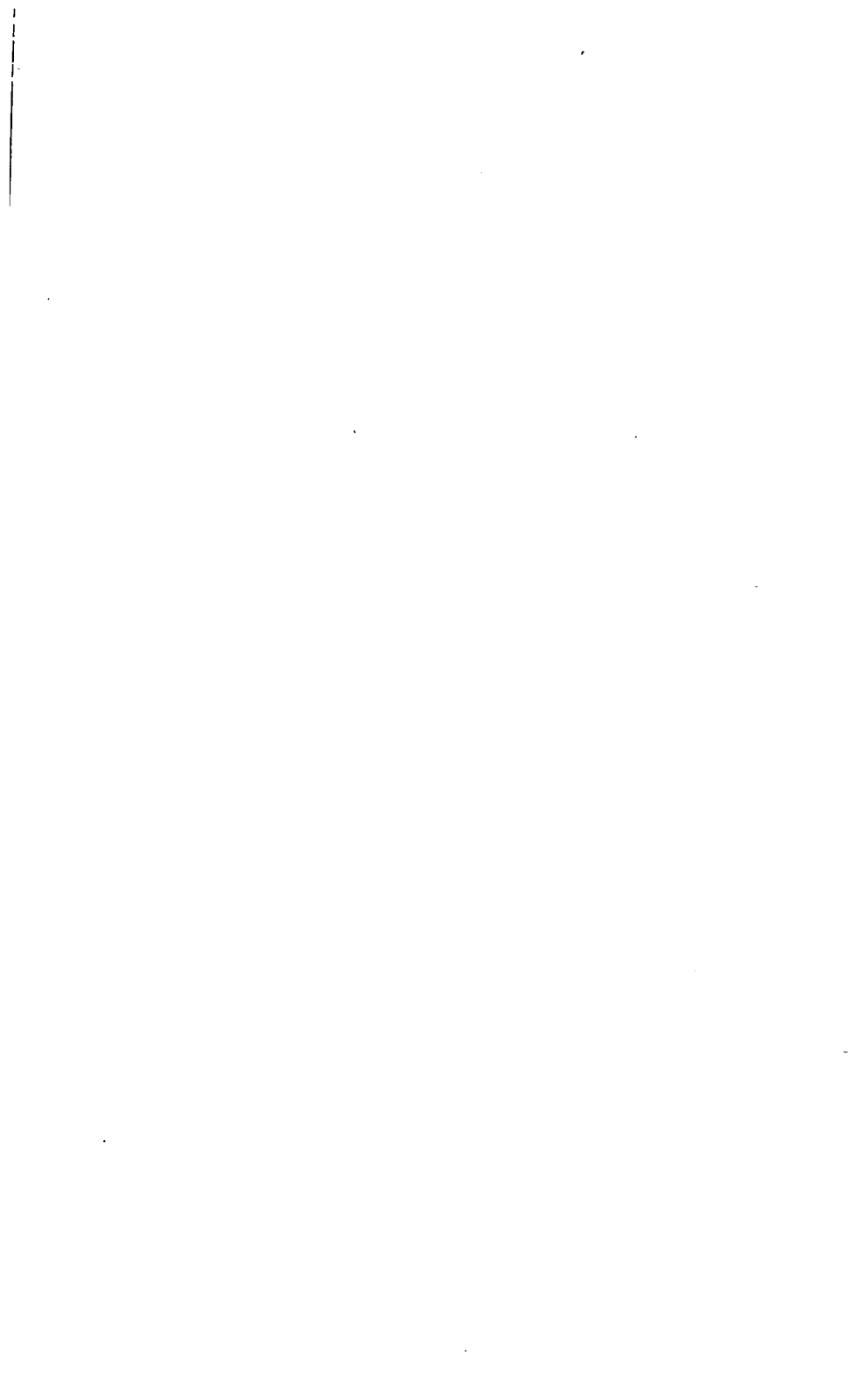
³ Strype, *Parker*, Vol. I. p. 81. *Eccl. Mem.* Vol. III. Part i. p. 80. *Collection of Letters, &c.* p. 165, et seq.

⁴ Burnet, Vol. II. p. 623. Strype, *Eccl. Mem.* Vol. III. Part i. p. 510. *Whitgift*, Vol. I. p. 10. Johnston, p. 209, &c.

1558. In the first year of Queen Elizabeth's reign, was passed an Act (1 Eliz. c. 1) for "restoring to the Crown the ancient jurisdiction over the State Ecclesiastical and Spiritual, and for abolishing all foreign jurisdiction repugnant to the same." This Act revived the statutes 23 Hen. VIII. c. 9.; 24 Hen. VIII. c. 12.; 25 Hen. VIII. c. 8. 19. 21.; 26 Hen. VIII. c. 16.; 32 Hen. VIII. c. 28.; 37 Hen. VIII. c. 17.; 1 Edw. VI. c. 1.; 2 Edw. VI. c. 23.; besides repealing such Acts as had been revived in the preceding reign in favour of papal authority. But more especially by the eighth section of this Act it was enacted,—

"That such jurisdictions, privileges, superiorities and preeminencies spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority have heretofore been or may lawfully be exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order and correction of the same, and of all manner of errors, heresies, schisms, abuses, offences, contempts and enormities, shall for ever by this present parliament be united and annexed to the imperial crown of this realm. And that the kings and queens of this realm shall have full power and authority by virtue of this act by letters patent under the great seal of England, to assign, name and authorise, when, and as often as they shall think meet and convenient, and for such and so long time as they shall think meet to exercise, use, occupy and execute all manner of jurisdictions, privileges and preeminences in any wise, touching or concerning any spiritual or ecclesiastical jurisdiction within these realms; and to visit, reform, redress, order, correct and amend all such errors, heresies, schisms, abuses, offences, contempts and enormities whatsoever, which by any manner of spiritual or ecclesiastical power, authority or jurisdiction can or may lawfully be reformed, ordered, redressed, corrected, restrained or amended to the pleasure of Almighty God, the increase





of virtue, and the conservation of the peace and unity of this realm: and that such person and persons so to be named, authorized and appointed after the said letters patents to him or them made and delivered, shall have full power and authority, by virtue of this act, and of the said letters patents to exercise, use, and execute, all the premises, according to the tenour and effect of the said letters patents, any matter or cause to the contrary, in any wise, notwithstanding."

It will thus appear (1) that, whilst the statute of 26 Hen. VIII. c 1. gave to "the King, his heirs and successors, full power and authority from time to time to visit, &c.," this Act of Elizabeth united and annexed "jurisdictions, privileges, &c. to the imperial crown of this realm;" (2) and whilst the former Act of Supremacy gave "full power and authority to the King, his heirs, &c.," the statute of 1 Eliz. limited the administration of those "jurisdictions," &c. to such persons as were nominated and appointed by the Royal Letters Patents; yet (3) the "power and authority" of persons so nominated was then understood to be limited only "by the tenor and effect of the said Letters Patents." In fact, it is not easy to conceive anything more comprehensive than the wording of this clause. It invested the Crown with unlimited jurisdiction in all matters which by law, usage, or conjecture could be regarded as ecclesiastical; and hence followed the High Commission Court and all its attendant meddlings.

Under the authority of this Act, therefore, a 1559.
Commission was issued by the Queen for a Visitation of the University and Colleges of Cambridge.

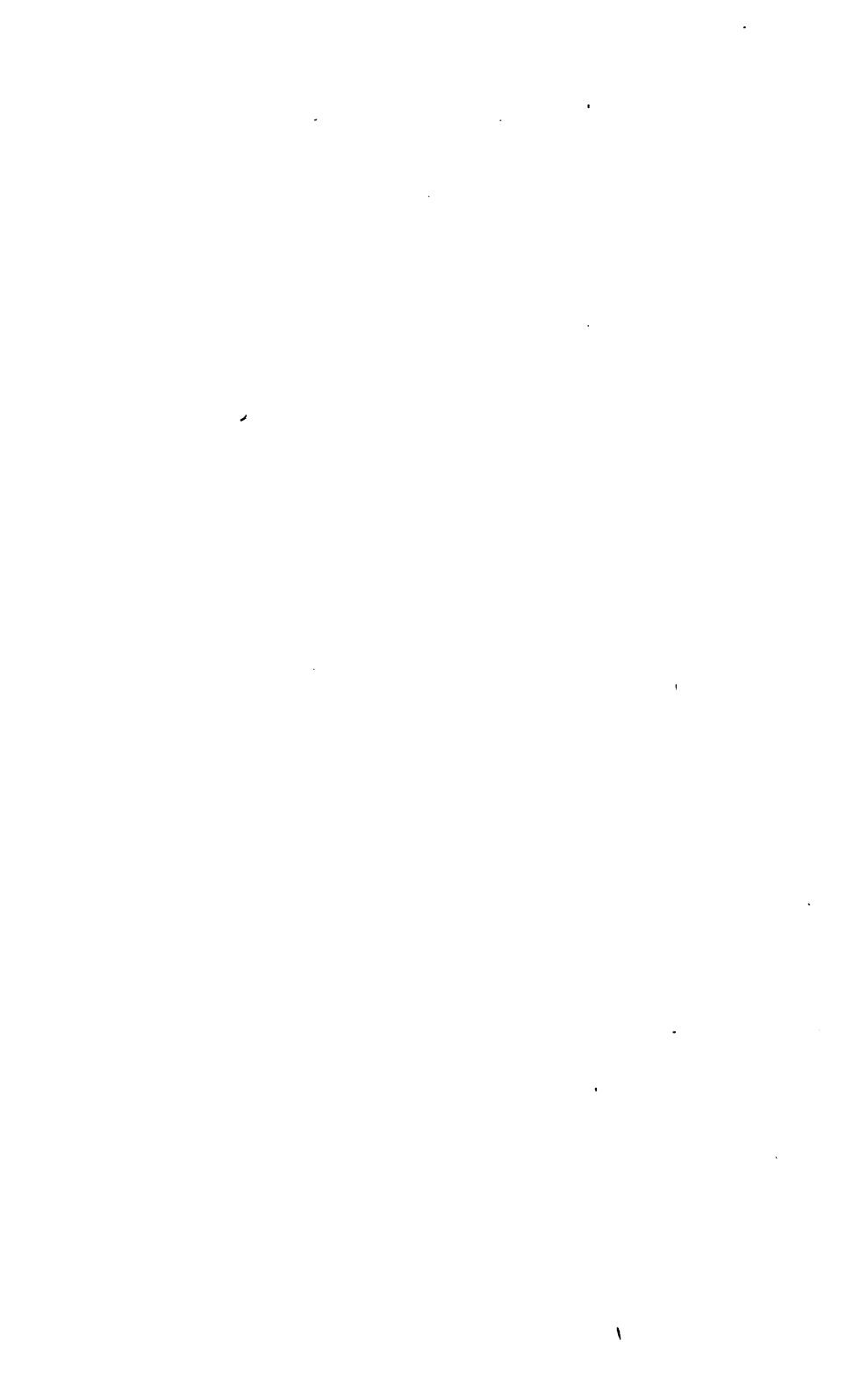
It is dated June 20, 1559; and seems, with such additions and changes as a difference of times demanded, to have been copied from the previous Commissions under Edward VI. The most material variations of Queen Elizabeth's Commission from that of her Royal brother consist in the omission of those clauses, in which King Edward VI. empowered his Visitors to unite two or more Colleges, and to found Law Fellowships and a Medical College. There was given, in addition, power to license preachers; and to restore to their preferment such Masters and Fellows of Colleges as might have been ejected on account of Religion, or other causes. It was also under the authority of this Commission that the Statutes given by Edward VI. to the University and different Colleges were, with certain modifications, revived¹.

In the same year, there was a Royal Visitation of the University and Colleges of Oxford, where, also, Statutes were changed, and alterations made similar to those effected in Cambridge. It will, therefore, only be further observed, that the Commission, above mentioned, concludes with an assumption of the Royal dispensing power "*Aliquo alio statuto, &c. non obstante*"².

1560. On the petition of the Universities of Oxford and Cambridge, and of the Colleges of Eton and Winchester, the Queen granted permission to those

¹ *Collection of Letters, &c.* from the MS. Library of Corpus Christi College, pp. 275, et seq. Strype, *Parker*, Vol. I. p. 86. *Annals*, Vol. I. Part i. p. 248. Johnston, p. 214.

² Strype, *Parker*, Vol. I. p. 95. Johnston, p. 212.



Learned Bodies to use a Latin Version of the Book of Common Prayer in their Chapel Service³. This Licence was conceded by "Letters Patents" which bear date April 6, 1560, and which ground their authority on the Royal prerogative:..."constituimus per præsentés licitum esse et permissum nostra auctoritate et privilegio regali, &c."

We here, therefore, find that the Crown claimed the power of dispensing with an Act of Parliament. The 1 Eliz. c. 2. required "all and singular Ministers in any Cathedral or Parish Church, or other place within the realm, &c." to perform Divine Service according to the Book of Common Prayer in English; and by the last clause of the Act, moreover, all former laws "wherein or whereby any other Service, administration of Sacraments or Common Prayer, is limited, established, and set forth to be used," are declared to be "utterly void and of none effect." To grant permission, therefore, to use a Latin Version of the Prayer-Book, was a direct contravention of this statute. If, also, we may judge from what took place the following year in Ireland, it would seem as if there were a misgiving on the part of the Queen or her advisers, that the prerogative had in this instance been carried a little too far; since in the Irish Act of Parliament (2 Eliz. c. 2.⁴) which enjoined the use of the Book of Common Prayer in English, a clause was introduced authorising, in certain cases, the use of a Latin Ver-

³ Strype, *Ann.* Vol. I. Part i. p. 333. Wilkins, *Concil.* Vol. iv. p. 217.

⁴ *Irish Acts*, 2 Eliz. c. 2. Collier, *Ch. Hist.* Vol. II. p. 462.

sion¹. Add to this, that the Royal Licence or Order, to have the Liturgy read in Latin, was soon afterwards (1568) disregarded in most of the Colleges in Cambridge; nor does it appear that obedience to the Royal Will could, in that respect, be enforced².

In the same year, a Royal Commission was given to Archbishop Parker and others to revise the Statutes of Christ's Church, Oxford. This being one of the Collegiate Churches, founded by Hen. VIII., the power for her life of revising, making and prescribing Statutes for such Foundations had been conceded to the Queen by the 1 Eliz. c. 22.; even if that power had not been made over to the Crown by the Act of Supremacy³.

1561. The following year appeared Queen Elizabeth's Order against the residence of the wives and families of the members of Cathedrals and Colleges within the precincts of any such Foundations. The Order is dated the 5th of Aug. 1561⁴, and was authorised by 1 Eliz. c. 1. as that Act was then interpreted.

The Queen also this year, by her Letters Mandatory, granted the Headship of Queen's College, Oxford, to Dr Francis. The Queen's Letters appear to have been accompanied by those of the

¹ A clause to authorise the use of the Common Prayer in *Latin* within the Universities, was introduced also into the Act of Uniformity, when the Privilegium Regale was far from being considered as defunct.

² Strype, *Parker*, Vol. i. p. 534.

³ Strype, *Parker*, Vol. i. p. 158. *Grindal*, p. 119.

⁴ *Stat. Acad. Cant.* p. 274. *Dyer, Privileges of the University of Cambridge*, Vol. i. p. 131. Strype, *Parker*, Vol. i. p. 212, &c.



Archbishop of York, who is *ex-officio* Visitor of the College⁶. It appears, also, that the Archbishop had appointed certain of the Heads of Houses to see that Francis was admitted Provost. After much strife, this person was placed at the head of the College; but from any thing that appears to the contrary, it was by the authority of the Visitor. An instance of Commissaries appointed by the Archbishop of York, as Visitor of that College, in a dispute about electing a Provost, occurs as late as 1710⁶. Yet, if the Queen had chosen to issue a Mandate for the purpose in question, the Act of Supremacy would have authorised her to do so; not to mention, that the Royal Commission for visiting Oxford was still in force⁷.

Next year one Saunderson was deprived of his 1562.
Fellowship at Trinity College, Cambridge. The cause of his deprivation, was "a stomachous insulting of the Master; and the maintaining of Papisitical doctrines in his readings." It would seem, however, that Saunderson appealed to the University Court against the decision of his College; but that in consequence of a letter from Dr Beaumont (the Master of Trinity) to the Archbishop of Canterbury, he was summoned to appear before the Queen's Commissioners for Ecclesiastical Causes. There is extant also, a letter from Dr Nowell to Archbishop Parker, requesting his Grace and the other Commissioners not to refer Saunderson's case

⁶ Strype, *Life of Grindal*, p. 92.

⁶ Ayliffe, *State of Oxford*, Vol. 1. p. 302.

⁷ Johnston, *The King's Visitatorial Power*, &c. p. 219.

back to the local Courts; for that Saunderson had made all sorts of interest to secure a favourable issue to his cause. On the contrary, the Vice-Chancellor of the University wrote to the High Commissioners, begging them to withhold their interference, since a suit between the Master of Trinity and Saunderson was pending in the Chancellor's Court, where only, on the authority of both ancient and modern Charters, cognizance of the cause ought to be had. Saunderson, nevertheless, appears to have been called before the Commissioners, who desired him to go home, to unsay his heresy and be quiet. But on returning to his College, he found that Mr Beaumont, the Vice-master (brother to the Master), denied the authority of the High Commissioners to restore a Fellow to his Fellowship; affirming that that could be done only by the Queen on the "Supplication" of the Society. I do not find how this affair terminated; but it affords us evidence that the High Commissioners did not regard the plea of local privileges to be a valid argument against their right to interfere in the affairs of the Universities¹.

1564. The next case of Royal interference with the Universities, occurs in the year 1564. Two Heads of Houses in Oxford, (Sampson, Dean of Christ Church, and Humphrey, President of Magdalene College,) were summoned to appear before the Ecclesiastical Commissioners, for refusing to comply with the Queen's Injunctions respecting the wearing of Aca-

¹ *The Parker MSS. in Corpus Christi College Library, CVI. 220—228.*



demical and Clerical Habits². The only material circumstance, however, to be here noted, is, that this transaction would, in the absence of any other evidence, be sufficient to prove that the Act of Supremacy, under which these Ecclesiastical Commissioners took their authority, was regarded as conferring on the Crown the power to reform and alter all things connected with the Universities, as well as elsewhere. This is, indeed, expressly taken for granted by the Queen's Letter to Archbishop Parker³, out of which the transaction above mentioned took its rise. For the correction of disorders and the promoting of uniformity, her majesty "strictly charges" the Metropolitan, if need should be, to confer with all persons "having jurisdiction ecclesiastical, as well in both our Universities as in other places Collegiate, &c."..... and "within every of the said jurisdictionsas the several cases shall appear to require reformation, so to proceed by Order, Injunction, or Censure, according to the order and appointment of such laws and ordinances as are provided by Act of Parliament and the true meaning thereof."

Towards the end of this year, the Queen gave permission to the Universities of Oxford and Cambridge, to neglect the observance of Wednesday as a "fish-day." The observance of that day had been enjoined by Act of Parliament (5 Eliz. c. 5.) two years before; but the same Act provided that Licences for eating flesh might be granted "accord-

² Strype, *Ecccl. Ann.* Vol. i. Part ii. p. 132, &c. Parker; Vol. i. p. 322.

³ Strype, *Parker*, Vol. III. p. 67, &c.

ing to the laws of this realm." And Prynneⁱ (no mean authority) was of opinion, that the Queen's power in this matter was derived only from the excepting clauses in 5 Eliz. c. 5. But it is probable, that to grant such Licences would then have been considered within the Royal Prerogative.

1565. In consequence of some want of conformity in the manners and habits of the students and others in Cambridge, "the Queen appointed the Visitors again to inspect and regulate the University affairs². The Statutes of King Edward VI., established by his Council and delivered by them to his Visitors, were revised by these and sent home again." This seems, therefore, to have been merely a revival of the commission of 1559. There appears also, about this time, to have been much disorder and insubordination in many of the Colleges in Cambridge; but as these were repressed by the Chancellor of the University in his official capacity, it does not fall within the intention of these pages to notice them further, than to state that the letters of Cecil on the occasion, shew that the correction of such irregularities might legally have been undertaken by the Sovereign. In a letter to the Vice-Chancellor, Cecil observes, that "he had acquainted the Queen with this violation of her ordinances that she had enjoined him to punish such as were faulty: offering also to him her own princely aid for the effectual doing of it. Which, however, he thought

ⁱ *Animadversions, &c. on the 4th Part of Coke's Institutes, &c.* p. 236.

² *Strype, Parker, Vol. i. p. 385.*





fit to decline, and to make use only of his own lawful power³." So, again, in a letter to the Bishop of Ely, the Chancellor observes, "that by her [the Queen] he had been straightly commanded to see reformation had with speed and severity; and so he had promised her majesty to do; although he said he would seek it first by ordinary means. But that, if it should otherwise fall out, he should be glad, for his discharge, to refer the whole to her supreme authority⁴."

• In the year 1567, we find certain Decrees made 1567.
for the rectification of some disorders which then existed in Merton College, Oxford⁵. These Decrees are subscribed by the Archbishop of Canterbury, the Bishop of London, Sir Gilbert Gerard (the Attorney-General), Dr Thomas Yule, and Dr William Drury: but whether as Special Commissioners for that particular occasion, or as Members of the High Commission Court for Ecclesiastical Affairs, does not clearly appear. From the fact, however, that all the subscribing parties were Ecclesiastical Commissioners, it is most probable that it was in this latter capacity that they interfered in the case under notice. This conclusion is strengthened by the consideration that the Archbishop of Canterbury, as Visitor of that College, had, on a former occasion, given Injunctions by his own authority⁶; whereas, in the Decrees in question, he appears united in

³ Strype, *Parker*, Vol. i. p. 392.

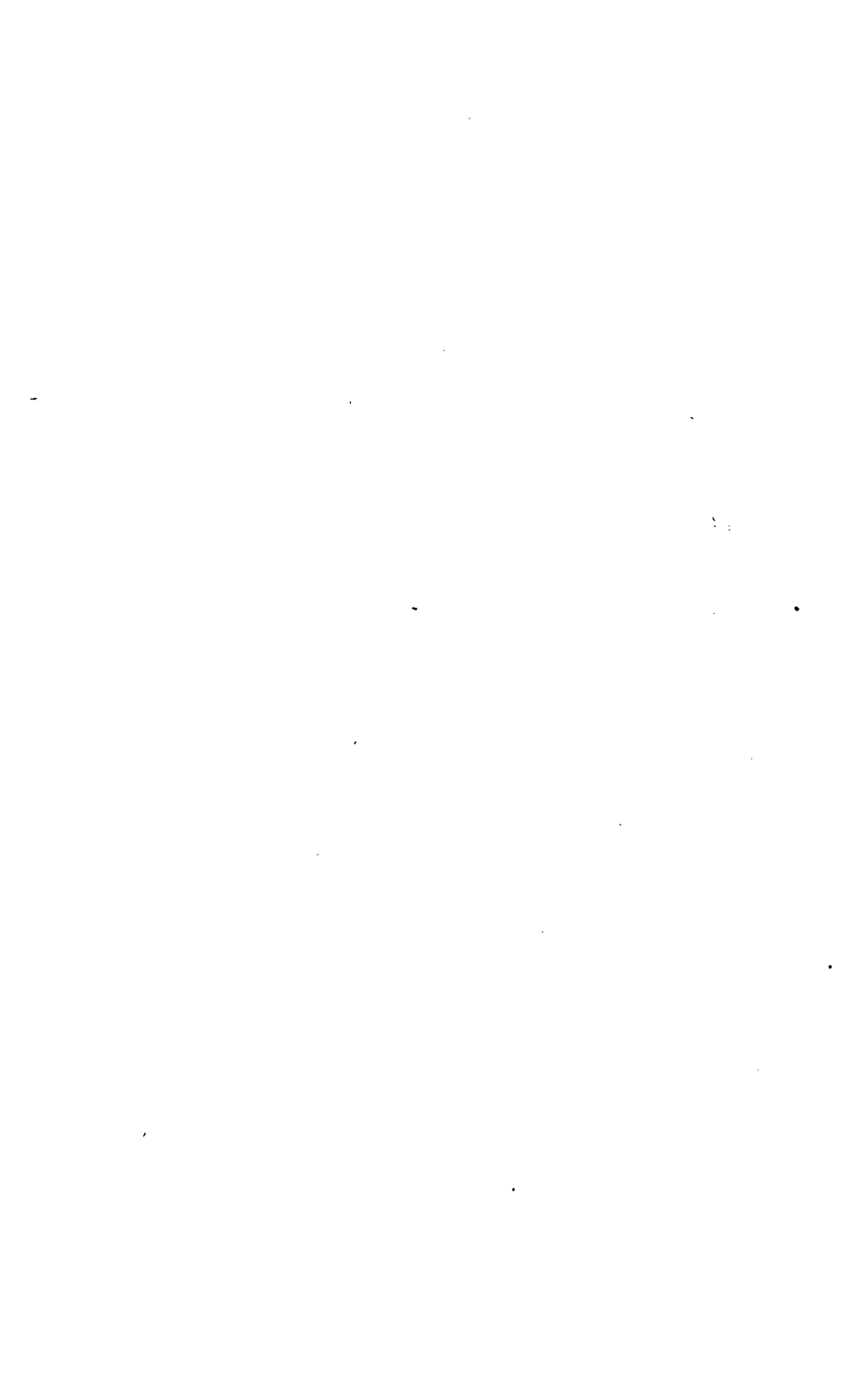
⁴ Strype, *Ann.* Vol. i. Part ii. p. 159.

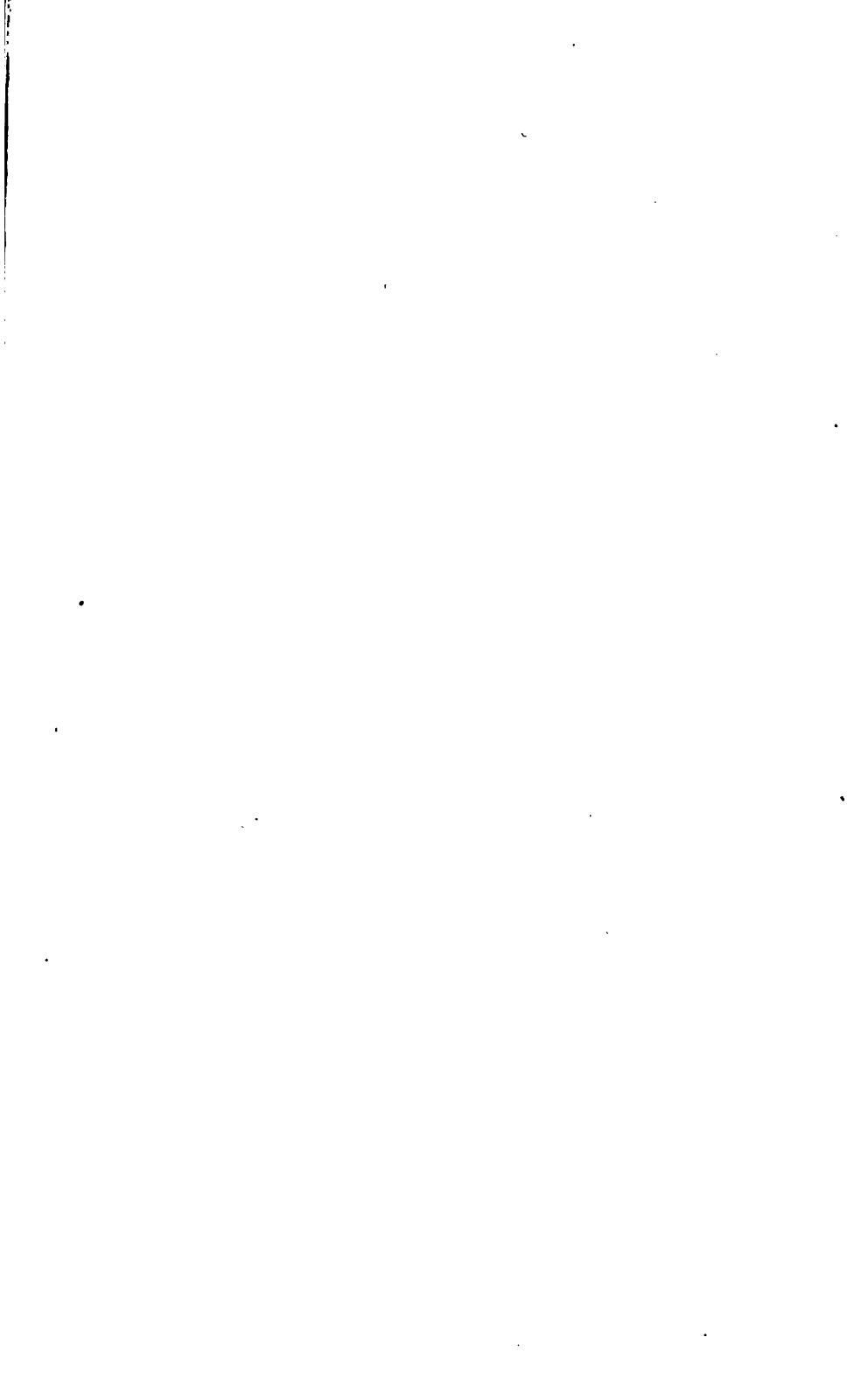
⁵ Strype, *Parker*, Vol. i. p. 501, &c. p. 531. *Ann.* Vol. ii. Part i. p. 419.

⁶ Strype, *Parker*, Vol. i. pp. 498, &c.; 500.

authority with others: and that to suppress a rebellion against his Visitatorial rights. The probability, therefore, is that the Archbishop had (in the words of Cecil) "for his own discharge," referred "the whole to the Queen's supreme authority." But be this as it may, the Commission under which Merton College was visited, whether special or not, must have emanated from the Crown; or, in other words, was sanctioned by the Act of Supremacy.

1568. Queen Elizabeth, in the following year, sent letters to the Society of Corpus Christi College, Oxford, recommending them to choose Mr William Cole for their President; but they rejected the recommendation, and elected another person. The Queen being informed of this, pronounced the election void; and expressly commanded that Cole might be admitted President. On the refusal of the Fellows, her Majesty sent the Bishop of Winchester (the Visitor of the College), desiring him to see that Cole was admitted. But this was no easy task; for the Visitor found the College-gates closed against him; and he succeeded in his mission only by breaking open the gates by force, and expelling the refractory Fellows. In the fulfilment of this duty, however, the Bishop appears to have met with so much opposition and abuse, that he was fain to write to Archbishop Parker, "shewing that it was his judgment, that the irregularities of this College would be better remedied by the Ecclesiastical Commission than his private Visitation." Accordingly, in the same year, Corpus Christi College was visited by Commissioners from





the Queen¹; who inflicted "lighter punishments upon lesser crimes," and expelled "three notorious Papists²."

During this year, also, information was conveyed to some of the Queen's Ecclesiastical Commissioners, of "divers misdemeanors, as well in manners as in doctrine," of which the Society of Corpus Christi College, Cambridge, was guilty. Upon this information, the Commissioners directed their letters to the Vice-Chancellor, and some other Heads of Houses, giving authority to enquire into these matters, and to report upon them. The parties last mentioned hesitated to undertake their Commission; lest, by admitting the authority of the Ecclesiastical Commissioners within the University, they should prejudice the privileges of that Body. They, therefore, consulted with their Chancellor (Cecil), who demanded from the Ecclesiastical Commissioners an opinion as to the extent of their authority in the matter in question. The following is the reply which Cecil received:—

"It may please you to be advertised that our opinion is that the Queen's Majesty's Commission for causes Ecclesiastical, doth extend, and may be executed upon persons

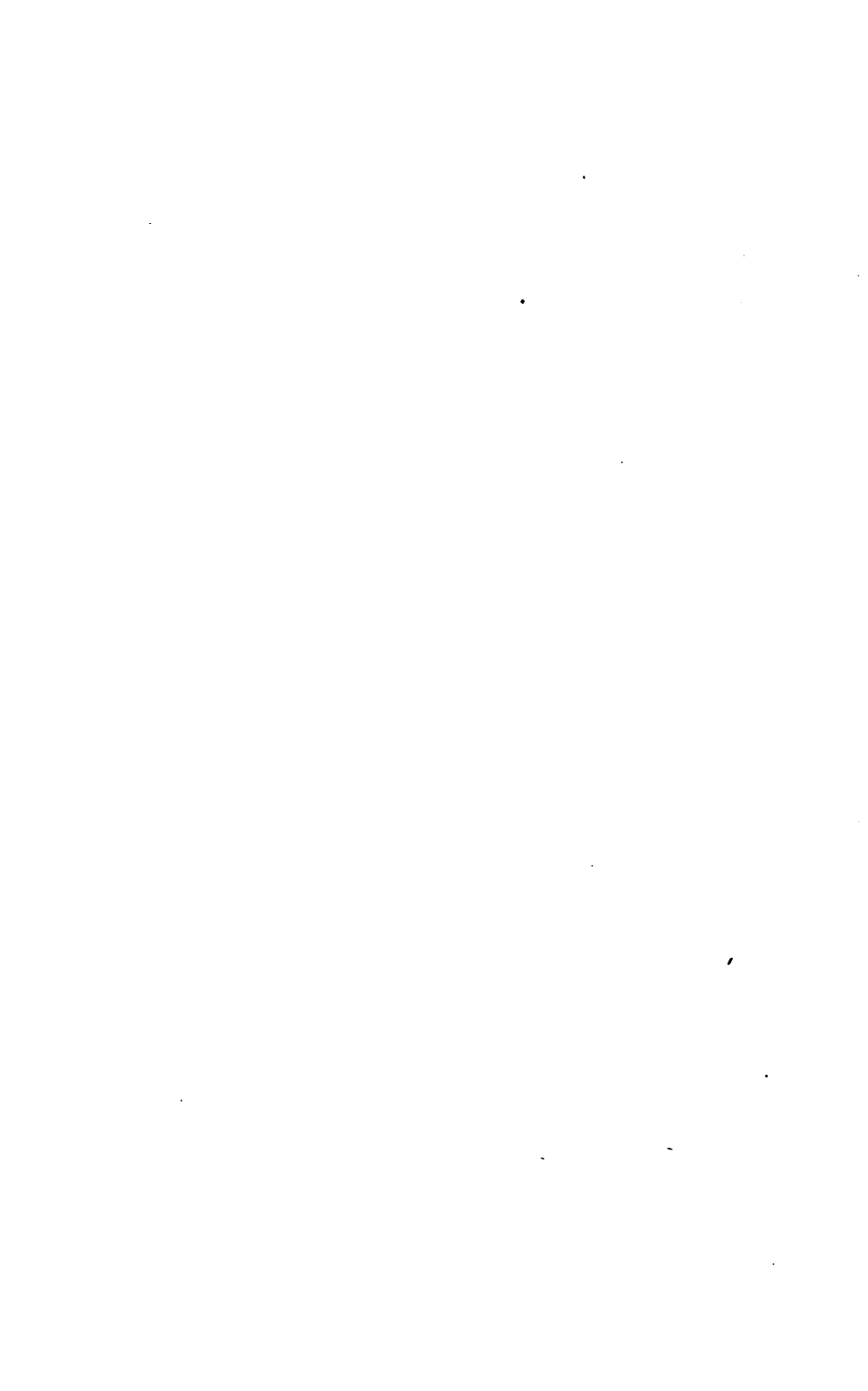
¹ Anthony Wood informs us that the Commissioners were, "The Chancellor of the University (the Earl of Leicester), the Bishop of Winchester (Horn), Sir William Cecil, Thomas Cooper, and Lawrence Humphrey, D.D.; and George Ackworth, LL.D.," Public Orator at Cambridge. These parties, however, were not among the Commissioners appointed to visit the University in 1559, nor were they all members of the Ecclesiastical Commission, and therefore were specially commissioned for this occasion.

² Strype, *Parker*, Vol. i. p. 528, &c. *Grindal*, p. 196, &c. Johnston, p. 221. Wood, *Hist. and Ant. Univ. Oxon.* Lib. i. p. 290.

resiant within either of the Universities, or within any other privileged place within the realm, by virtue of the words 'in places as well exempt as not exempt,' and that the Vice-Chancellor of Cambridge, and others which are joined with him in Commission, from the Commissioners here, may safely without prejudice of the liberties of the same University, proceed to the execution of the said Commission. Yet, notwithstanding, we think it not amiss, for avoiding all scruples, that the said Vice-Chancellor and the other associates with him, do declare by protestation that their meaning in executing of the said Commission is not to prejudice any the liberties of the said University, but only to shew their obedience unto the authority of the Queen's Highness committed to the said Commissioners."

This is dated from Lambeth Jan. 4. 1568, and signed by the Archbishop of Canterbury, the Bishop of London, and two others. Still the Vice-chancellor and other Heads, refused to act; so the Ecclesiastical Commissioners revoked the Commission they had sent to Cambridge, and took the matter into their own hands by summoning different Members of the Society of Corpus Christi to Lambeth. Many of the members went voluntarily, but one of the Members of the College (Stallard) refused to leave Cambridge, though sent for to Lambeth by "letters and commandment." In fact, the Vice-Chancellor interfered to prevent the execution of any of these commands of the High Commission Court; "alleging [by letters] that it was never heard that any extraordinary or foreign authority had intermeddled to call any from the University."

This sturdy behaviour of the Vice-Chancellor seems to have puzzled the Ecclesiastical Com-



missioners; for before proceeding any further, "they thought it convenient to signify the whole matter to the Chancellor." They let him know

"That they marvelled not a little at what the Vice-Chancellor wrote and did, bearing in fresh memory their own continual proceedings in this Commission, since the first time of it. And that they had from time to time called, as occasion served, out of both the Universities, and had always to that present appearance humbly, without any denial or contradiction; and had done therein, as they trusted, good service to God, the Queen, and the Realm; removing by authority of their said Commission, out of both Universities, divers stubborn Papists, and head adversaries of God's true religion, to the number of forty or more; and some of them such as had been sent to the Commissioners by order of the Privy Council, as might appear by the Records. The denial of which authority now, after so long a time, they took too much to prejudice the credit of their said former doings, and to derogate the authority of the Queen's Highness' Commission committed unto them by Act of Parliament¹."

How this matter ended does not directly appear, only if we may judge from the circumstance that on further troubles breaking out in that College soon after, the Archbishop Parker laboured to pacify them, "partly by the authority of the Queen's Council, and partly by the help of the Vice-Chancellor and other Heads, we may conclude that the encroachments of the High Commission Court were successfully resisted². Indeed, the fact that the Commissioners revoked the Commission they had given to the Vice-Chancellor and others,

¹ *Strype, Parker*, Vol. 1. pp. 531, &c.

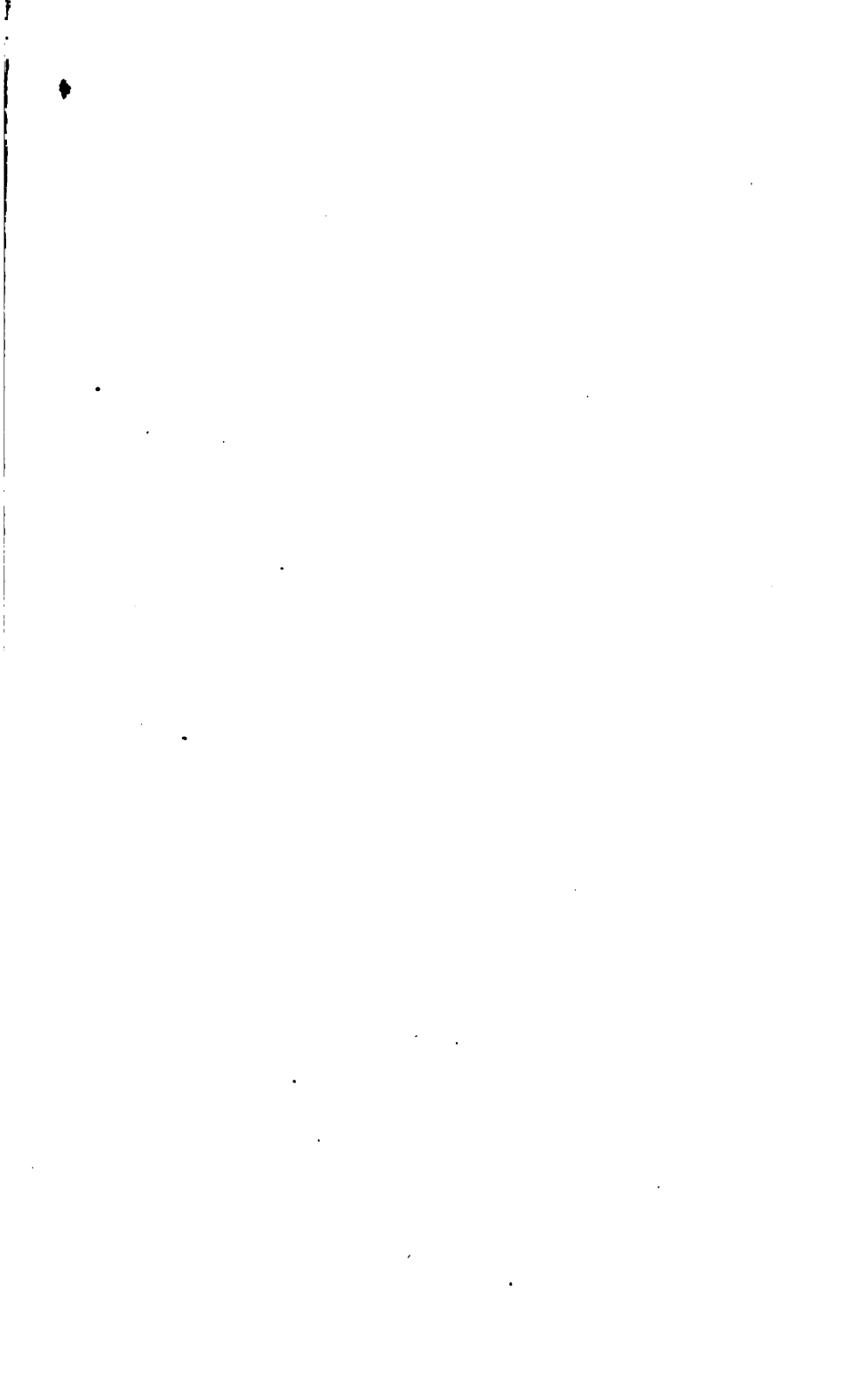
² *Ibid.* Vol. 1. p. 534.

and the tone of the letter just quoted, plainly indicate that they had some misgivings as to the legality of the authority which they affected to assume. And no wonder, for there is nothing in the Act of Parliament under which the High Commission Court was established, that authorised the Commissioners themselves to issue a Commission to others. It was in those days argued, indeed, that the power of these Commissioners was limited only by the "tenor and effect of the letters patents" by which they were appointed, so that they might issue Commissions, fine, imprison, or aught else—provided "the true unforced meaning" of the letters in question authorised them to do so¹. But whether the Ecclesiastical Commissioners who attempted to interfere in this instance with Corpus Christi College, Cambridge, had, by their Letters of appointment, the authority invested in them which they claimed, could only be decided by a reference to their Commission, and this they did not care to exhibit. Lord Coke observed, "that the High Commissioners (knowing the weakness of their authority) kept the Commission secret; and contrary to law and justice suffered not the same to be inrolled in the Chancery, so that the subject lived under an unknown commission and authority²." Yet the case we are considering affords an encouraging example of well-managed secrecy being no match for justice, and of the success which attended a steady, conscientious resistance

¹ *Apologie of certaine Proceedings in Courts Ecclesiastical*, Part ii. p. 106.

² *Institutes*, Part iv. p. 332, Edit. 1669.





to illegal interference with acknowledged rights, although that interference were attempted under the plea of an Act of Parliament.

Toward the end of 1568, we find Statutes for 1568. Corpus Christi College, Cambridge, confirmed anew by the Queen's Visitors of the University. It appears that there was some alleged informality in the manner in which revised Statutes had been given to this College on a former occasion, so that some of the Society did not consider themselves bound by them. Archbishop Parker, therefore, obtained another revision of the Statutes, and had his own signature and that of other Visitors of the University attached to them, to give them due authority³. From this it appears, that the Commission issued in the first year of Elizabeth's reign for a Royal Visitation of Cambridge, was still in operation; and that it was an admitted principle, even in those days of Prerogative, that Statutes not sanctioned by competent authority, were not binding on the parties for whose governance they were intended.

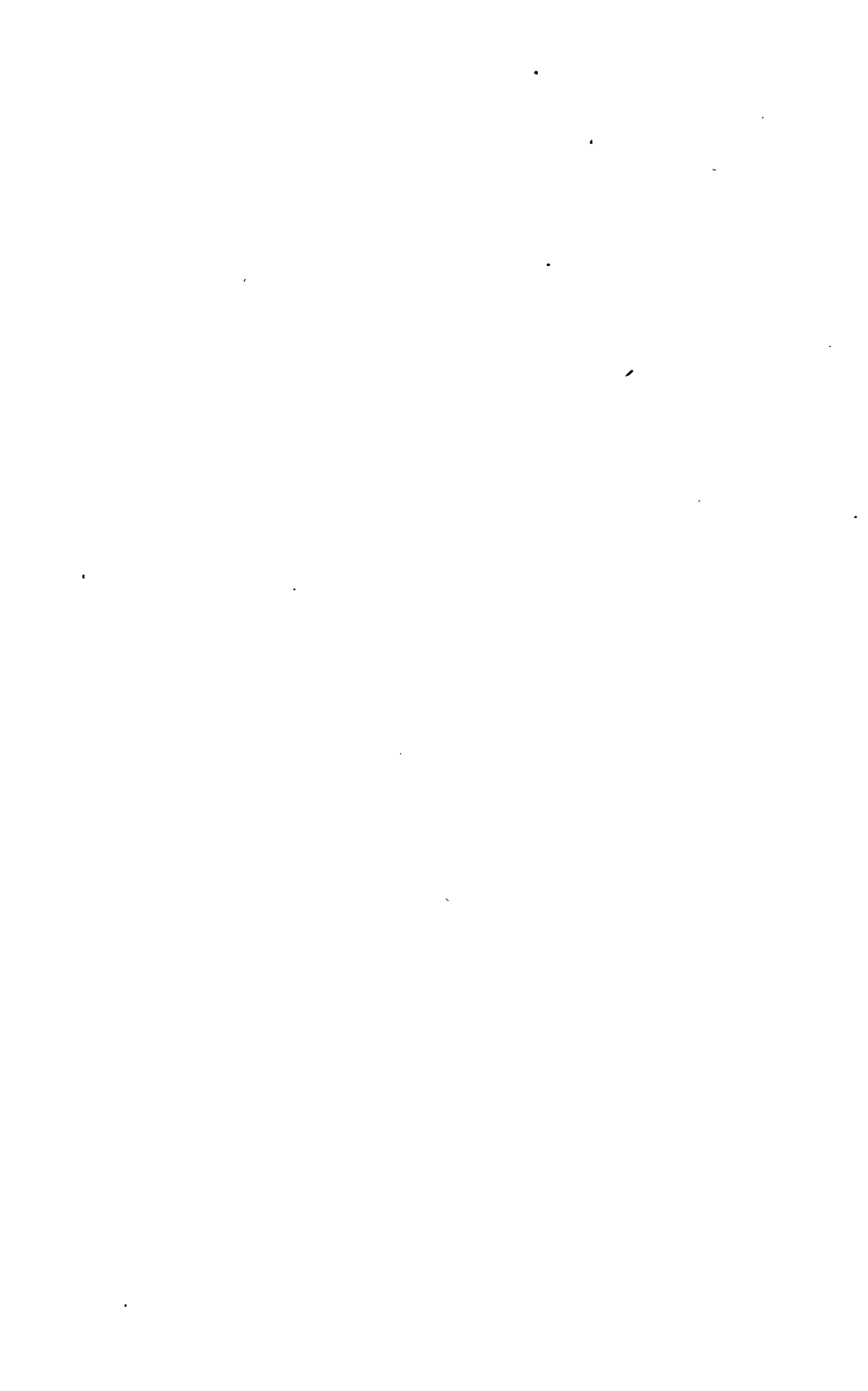
On the 13th of May this same year an application was made to Cecil by the Vice-Chancellor and other Heads of Colleges, requesting him to apply to the Queen for "letters of dispensation" for the purpose of "qualifying" that Statute of Trinity College, Cambridge, which prescribed the duties of the King's Readers. The Statute required that these "Readers" should "without any intermission continue their readings" throughout

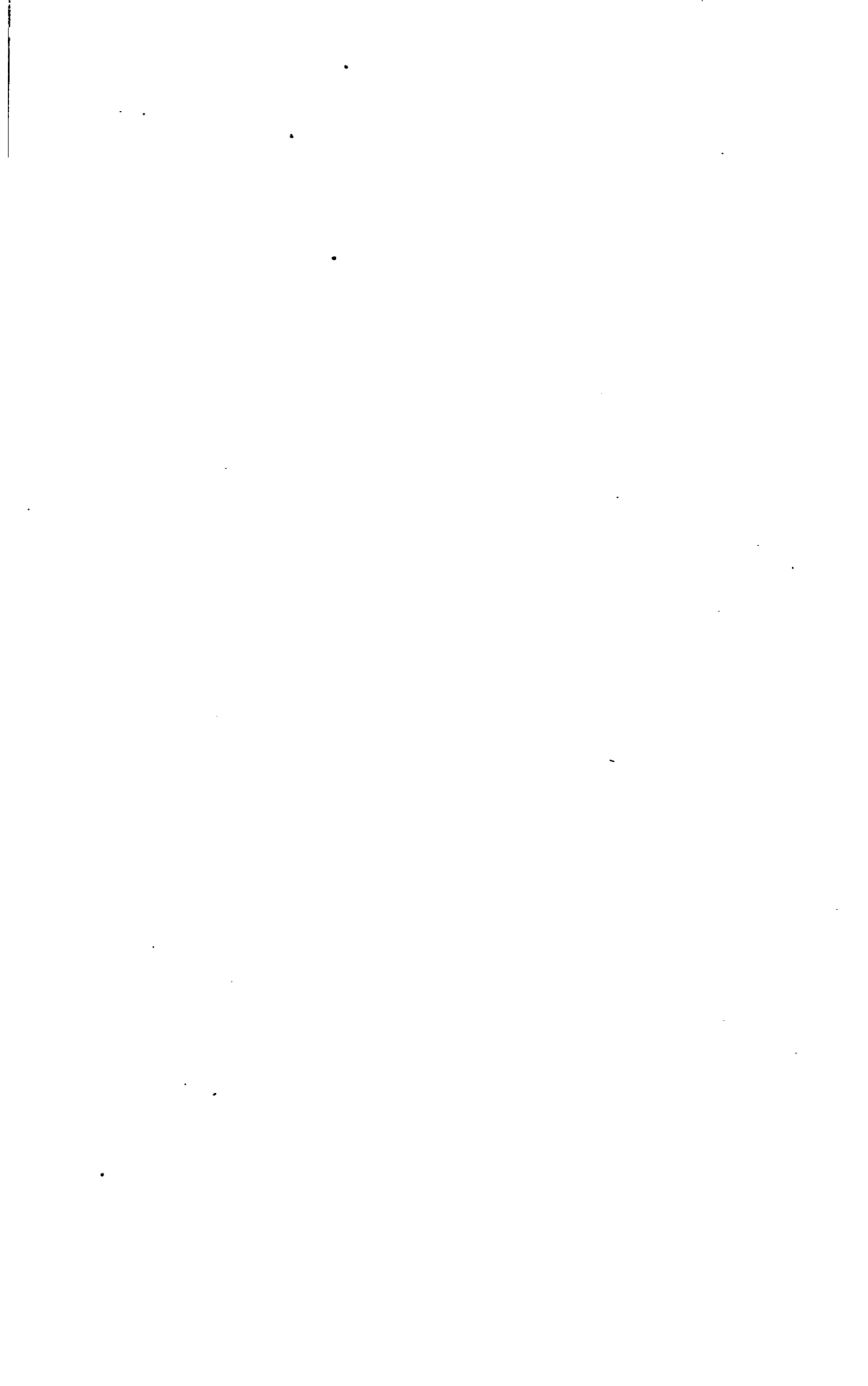
³ Strype, *Parker*, Vol. I. p. 536.

the Long Vacation: the object in applying to Cecil was to obtain the Royal permission for discontinuing those readings from Midsummer to Michaelmas. The Dispensation was obtained, and concludes:—"And in this behalf we do dispense both with you and the Ordinances and Statutes of that College; any article or thing conteyned in the said Statuts to the contrary notwithstanding¹." We are thus afforded another example of the Dispensing power of the Crown. Strictly speaking, to dispense with College Statutes was one of the usurpations practised by the Pope, and if for that purpose therefore a Dispensation could now be granted at all, it ought, by the provision of 25 Hen. VIII. c. 21., to have been by the Archbishop of Canterbury with, or without, the consent of the Queen in Council, as the case might have required. But the prerogative lawyers held that the authority claimed by the Pope was by that Act transferred to the Crown.

1569. In the following year there was a Royal Visitation of King's College, Cambridge, in consequence of a complaint made by some of the Fellows against their Provost. This Provost was Dr Philip Baker, who, "being a secret Papist, not only discouraged as much as he could the propagation of religion in that house; but endeavoured to enrich himself with the revenues thereof, so that the Fellows were justly disgusted with him." The Queen's Commissioners "followed their business so well, that the Provost found

¹ Strype, *Whitgift*, Vol. I. p. 216. Vol. III. p. 10, &c.





himself in great danger, and at length betook himself to flight, and so left the College destitute of a Governor." The Fellows were then permitted to elect another Provost, who (the Royal Commission being still in force) was confirmed in his office by the Commissioners. These Commissioners, also, in conjunction with the Provost, reformed many abuses in the College; and especially removed all Popish relics which the Provost Baker had carefully preserved. It is scarcely necessary to observe that it was the Act of Supremacy which empowered the Queen to issue this Commission².

In the following year the Puritans in Cambridge, headed by Cartwright, openly impugned the government of the Church. The disturbance ended in the expulsion of Cartwright, and in the silencing of the rest, by the University authorities. It is mentioned here only for the purpose of stating that Dr Chaderton, President of Queens' College, in writing to the Chancellor "to take some order for the reformation of these disorders," begs that a "Commission" might be sent "to such as he [Cecil] should like best in the University for Causes Ecclesiastical, or else by his letters to the Vice-Chancellor³." The Chancellor chose the latter alternative, yet Dr Chaderton's request shews that the Ecclesiastical Commissioners might have interfered. 1570.

² Strype, *Grindal*, p. 212, &c. *Whitgift*, Vol. I. p. 32, &c.

³ Strype, *Annals*, Vol. I. Part ii. p. 372, &c. *Grindal*, p. 240. *Whitgift*, Vol. I. p. 38, &c. *Parker*, Vol. II. p. 39.

During this year, also, Dr May (the Vice-Chancellor), Dr Whitgift (Master of Trinity), and other Heads of the University of Cambridge, seem to have applied for, and obtained through their Chancellor, a body of new Statutes for the University. The old Statutes, it was alleged, were found defective, "and not forcible enough to restrain the younger sort there; who now ran into novelties, and made great disturbances in the Colleges for the alteration of the government of the Church¹." They "were disobedient to the Heads, and refractory to the orders for wearing the habits enjoined both by the Church and University." The Statutes thus obtained received the Royal sanction on the 25th Sept. 1570; and are those by which the University is now governed. Many of the provisions made by these Statutes for the government of the University, were strongly objected to by a considerable party among the Members of the Senate, as being inconsistent with the oath taken to observe the "old Statutes." Yet the authority on the part of the Crown to grant such Statutes, does not seem to have been questioned. Thus, for instance, when it was complained that the New Statute "*De electione Procancellarii*" was "contrary to the olde statutes and customes so long continued;" the answer was, "We are persuaded that there is no such auntyent Statute in the Universitie of Cambridge given ether by Pope, legate, or anie subject of this realme whatsoever, but that the Queens Ma^{tie} uppon good consideracons may by her Ma^{ties}

¹ Strype, *Parker*, Vol. II. p. 37. *Whitgift*, Vol. I. p. 37.



ryall authoritie alter and chaunge the same

In reply to this answer, the objectors say: "We do not mislike procurement of alteration of superstitious wicked ympietye defacing Godes glorie, onlie we shewe the Statutes wheareto they weare sworne. As for us we severeallie acknowledge the Quenes superiority and obeye her auctoritie due-tifully with all submission²." Yet it has been generally concluded by those fully competent to give an opinion on the subject, that the validity of these Statutes cannot be made to rest on any known prerogative of the Crown, or on any legal enactment. It is, at the same time, scarcely probable that the Statutes of the 12th Eliz. were given on insufficient authority, when so many intimations were occurring of the readiness with which advantage would be taken of the least legal informality connected with the promulgation of them. It is possible, therefore, that an explanation of this difficulty may be found in the fact, that the Commission which gave legal authority to Cecil and others to compile the former Book of Statutes for the University, was still in operation³; and consequently that such Statutes as might now be agreed upon by any three of those Commissioners, would (by 1 Eliz. c. 1.) have the force of law. In favour of this hypothesis, it may be added, that whilst the Queen's Letter speaks of the Statutes promulgated in the 12th year of her reign, as the completion merely of those which

² *Collection of Letters, Statutes, &c.* edited by JOHN LAMB, D.D. &c. pp. 363, 379, 392.

³ Strype, *Parker*, Vol. II. p. 277.

had already been given, and thus implicitly rests both Books of Statutes on the same authority; we know that Cecil and Archbishop Parker, two out of three Commissioners who legally compiled the former Book of Statutes, gave their sanction also to the latter¹. We know, moreover, that about a year before this time, Archbishop Parker had taken care to secure the concurrence of other Visitors of the University besides himself, when he gave Statutes to Corpus Christi College²; and there is nothing, therefore, extravagant in the supposition that he would not fail to exercise the same precaution in a matter of so much importance as the revision of the Statutes of the University. If, however, this explanation be rejected, the Statutes of 1570 must be regarded as having been put forth without any other authority than that with which the Sovereign personally was then supposed competent to invest them; and that they were obeyed at the time, by the majority of the Senate, "duetifully with all submission," rather than from legal constraint.

1572. In 1572, there occurred a contest between the Queen, and the Warden and Fellows of All Souls',

¹ The writer is aware that the first Book of Statutes given by Elizabeth are considered by some to have been made law only by the Act of the 13th Eliz.; which incorporated the Universities, and gave legal validity to all Charters, Letters Patents, &c. that had been granted to those Bodies anterior to 26th April, 1561. Yet as those Statutes were agreed upon by Visitors commissioned for that purpose under the authority of an Act of Parliament, they became, as a matter of course, legally binding upon the University, even though the Act of Incorporation had not passed.

² See p. 23.





Oxford, respecting a Royal Letter dispensing with the Statutes of that College on behalf of Henry Wood, one of the Fellows; who was desirous of retaining his Fellowship without complying with the Statute which required him to take Orders. It appears that the Warden and Fellows demurred about acting upon the Dispensation, and addressed themselves to Lord Treasurer Burghley to induce him to "obtain of the Queen to use their Statutes as they had always done." In a letter to the Queen, also, they desired her Majesty to consider, that, to act upon her Dispensation, would be to violate a College Statute; to oppress the consciences of the Members of the College; and to hinder the progress of religion. The matter was referred to the Archbishop; though what was finally decided respecting it does not appear: this, however, seems to have been taken for granted throughout, viz. that the Queen had the power to dispense with the Statute².

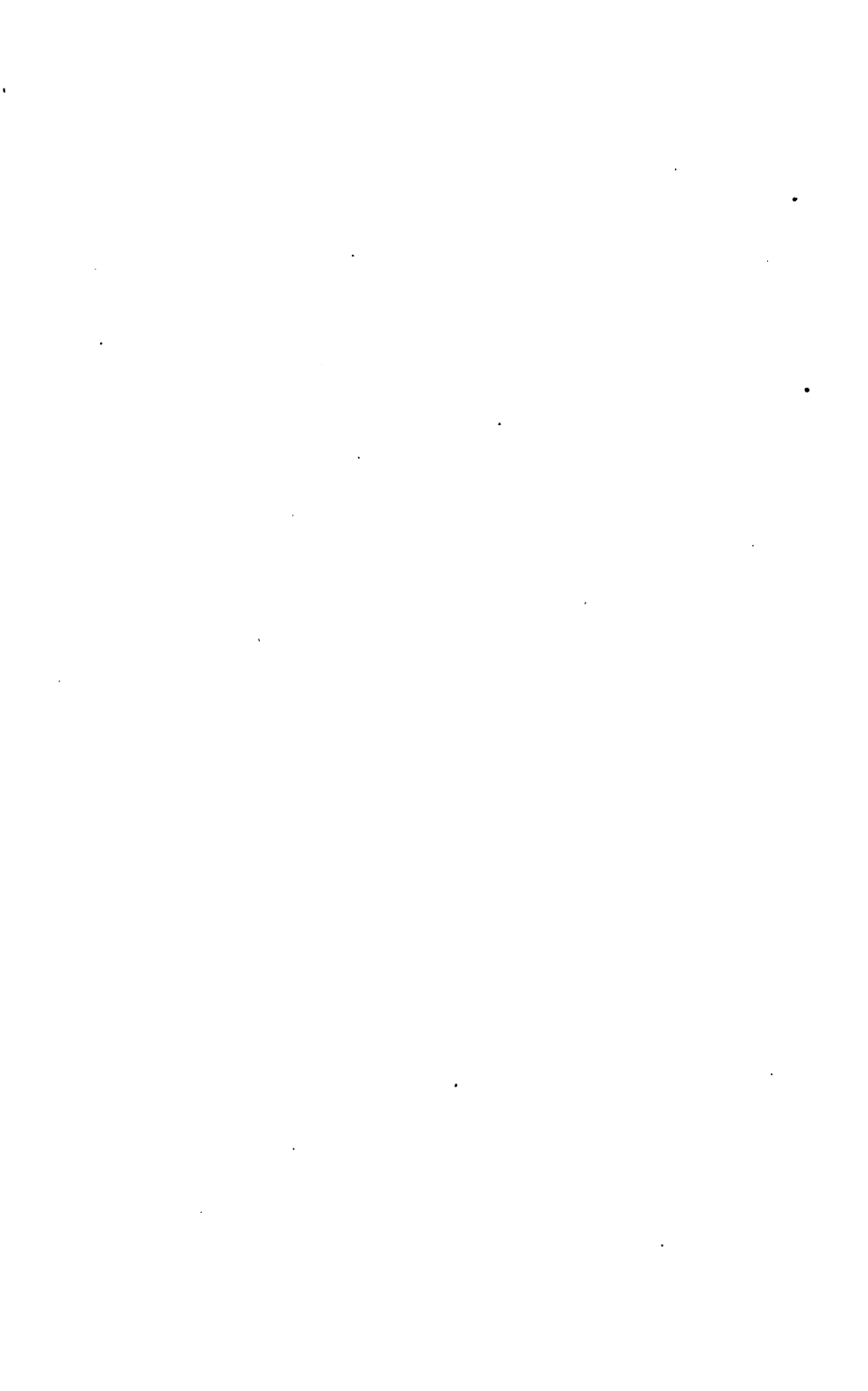
The same recognition of the Royal power to dispense with College Statutes, occurred in the following year, when Aldrich, Master of Corpus Christi College, Cambridge, applied to the Queen for leave to retain his Mastership, although, contrary to Statute, he refused to proceed to the degree of Bachelor of Divinity. It would seem that Aldrich and some of the Fellows of Corpus had, in the first instance, referred it to Archbishop Parker to decide whether or not the Statutes of their College allowed the Master to continue in his

² Strype, *Parker*, Vol. II. p. 105, &c.

office under Aldrich's circumstances ; and that on finding the Archbishop was opposed to Aldrich's wishes, the latter applied for a Royal dispensation. Being, however, defeated in this, the same parties then removed the hearing of their cause from the Archbishop to Lord Burghley as the Chancellor of the University. The chief reason that induced them to this was, that the Archbishop had chosen to decide the matter in dispute rather as an Ecclesiastical Commissioner and with other Commissioners, than singly, and in his private capacity. The University, therefore, took alarm, fearing lest the bringing of a College cause before the Ecclesiastical Commissioners, should prejudice the University privileges.

To allay their fears on this head the Ecclesiastical Commissioners wrote to the Vice-Chancellor (June 5, 1573), stating,

“That although their Commission in Causes Ecclesiastical did sufficiently authorize them to deal with any of her Majesty's subjects, and to call them before them, as well in places exempt as not exempt, as they had aforetime used to do ; and at that day did, as well by the said Commission, as also by the appointment of the Queen's Council, as of late they had done for some Fellows and Scholars of the University of Oxon: and as they had done before time as well there as in the University of Cambridge: whereby they doubted not they had rooted out some corrupt members, that else were like to have troubled the whole state: Yet because they being for the more part sometime of this University, and zealous to the same, for precedents' sake, had thought it good to write first unto them, requiring and commanding them, in the Queen's Majesty's name, to send up





unto them one Thomas Aldrich, Master of Arts in Corpus Christi College; and to have him bound with good sureties to make his personal appearance before them, and other their colleagues, at Lambeth, immediately on the receipt of their letters. He to answer to such objections as should be propounded to him; and not to depart without special license thereunto."

Notwithstanding this letter the Vice-Chancellor and others did not relish the interference of the Commissioners in the affairs of the University; and so applied to their Chancellor, in order to have the matter settled by him in his official capacity: which, after much delay, was accordingly done. From the communications, however, which passed between Archbishop Parker and Lord Burghley, respecting Aldrich's case, we learn indirectly to what authority the Universities were then considered to be subject: for the Archbishop, in answer to the objection which called in question the power of the Ecclesiastical Commissioners to interfere with this case, stated that the "Lords of the Council committed but lately the hearing of the matter concerning some of St John's College, in Oxenford, to the Ecclesiastical Commissioners, although in Oxenford they had then an Ecclesiastical Commission beside." He proposed, also, to Cecil, that Visitors should be sent to Cambridge to settle the disputes in Corpus Christi College; alleging that the former Commission from the Queen for visiting the University and the Colleges therein was still unrevoked, so that the Visitors appointed under that Commission had still the power to examine into, and reform

any University or College abuse, that might call for their interference'. It seems, therefore, to have been held at that time that there were four distinct methods, besides the University Courts, for rectifying University affairs: viz., by the Ecclesiastical Commissioners; by the Privy Council; by the Visitors appointed under the Commission of 1559; or by Commissioners specially appointed for any occasion that might require them, as on that connected with Corpus Christi College, Oxford, in 1568.

There is still a circumstance connected with the case of Aldrich to be mentioned, possessing some interest. It appears that among the reasons given to Cecil, by Whitgift and other Heads, why they demurred about attending to the commands of the Ecclesiastical Commissioners, one was, that they were "fully persuaded that should they obey that authority, they should do so against the Statutes of the University lately sent them by him, and confirmed by Act of Parliament; that it was the first act attempted against their Statutes, since the confirmation of them by Parliament²." From this it would seem as if the writers of the letter to Cecil considered the Act of 13th Elizabeth to have confirmed the Statutes given to the University in 1570: but then the Privileges which they regarded as being infringed by the Ecclesiastical Commissioners, were those conferred on the University by

¹ Strype, *Parker*, Vol. II. p. 272, &c. *Ann.* Vol. II. Part i. p. 458, &c.

² Strype, *Whitgift*, Vol. I. p. 100, &c. Vol. III. p. 29, &c.





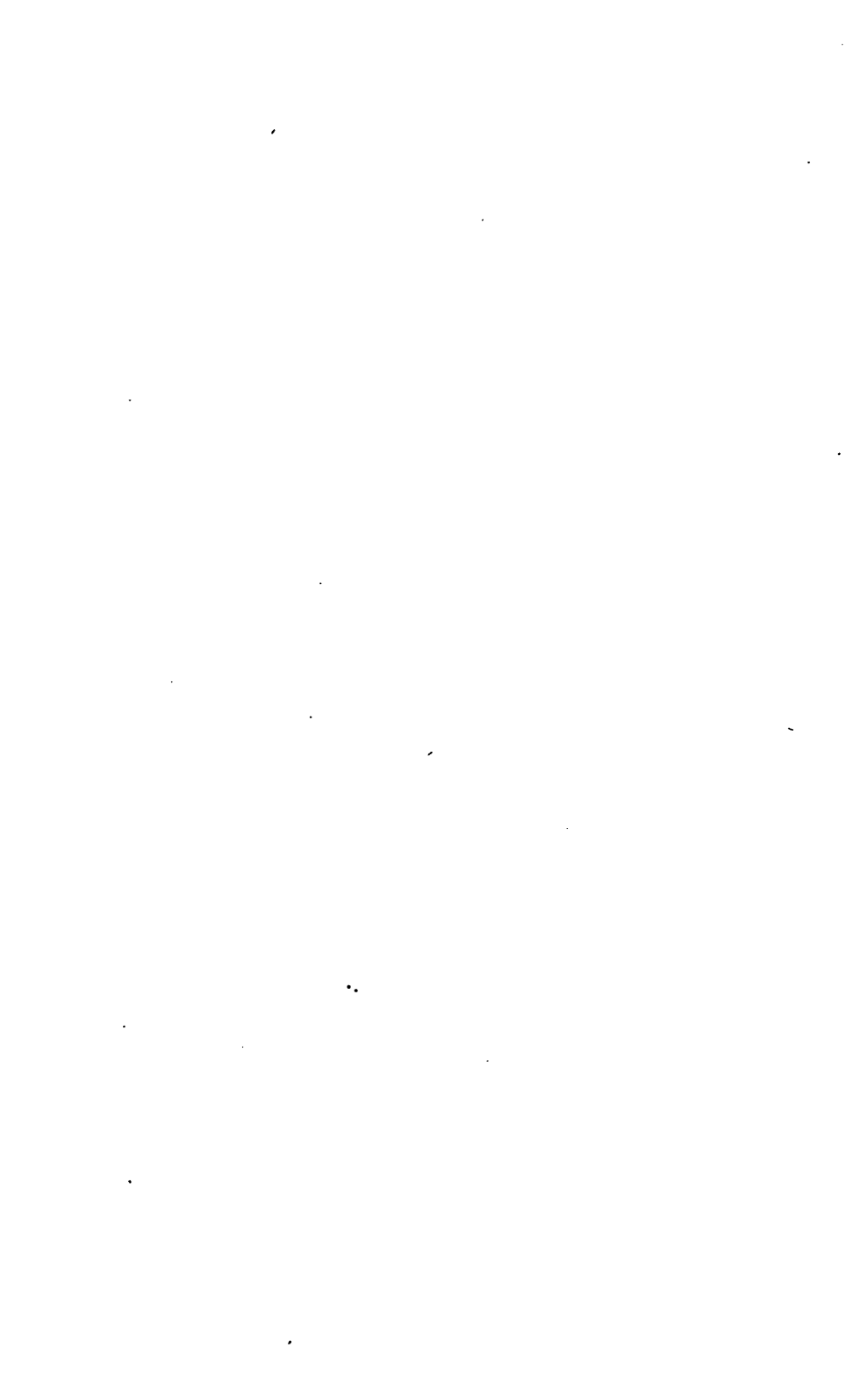
the Charter of the 3d of Elizabeth; for they add an Extract from that Charter to shew that the University had the privilege of trying all Members of their own body, and also appended that Clause of the Act of the 13th Elizabeth, which confirmed the Charter in question. It is difficult, therefore, to understand what Whitgift and others meant by stating that the "Statutes of the University," then "lately given," had been "confirmed by Act of Parliament," unless by supposing that such was the general impression at the time.

In this same year there occurred a dispute in Magdalene College, Cambridge, respecting the deprivation of one of the Fellows, (Mr Newcomen) who had obtained his election by unstatutable means: for because in the filling up of one particular Fellowship, the Master nominated two persons, of whom the Crown selected one, an irregular practice had grown up, that when one of these Fellowships was vacant, persons made immediate application to Court to procure a Royal Letter to the College, commanding such or such a person to be elected^s. It was in this way that Newcomen had obtained his Fellowship; but he was ejected for his pains by the firmness of Dr Kelk, the then Master of the College: who thus afforded another salutary example of the triumph of right principle over unstatutable authority.

In 1575, a Royal Commission was called for 1575. to visit St John's College, Cambridge. The circumstances which led to the appointment of the

^s Strype, *Whitgift*, Vol. i. p. 118.

Commission, were the following: For two years, or more, a dispute had been going on between the Master and Fellows of St John's, in which the latter tried to eject the Master, in consequence of some pretended breach of the Statutes on his part. Articles of complaint had accordingly been drawn up against the Master, (Shepherd) and presented to the Bishop of Ely, (Cox) the Visitor of St John's. The Visitor endeavoured to establish peace in the Society, but in vain: for the Statutes of the College, by the enforcing of which order should have been restored, were themselves "the greatest cause of jars and contentions, being uncertain and imperfect; in some places razed, and some lines stricken through with a pen; as it seemed good to the Commissioners in King Edward's time, and in Queen Mary's; who in judgement were diverse." There were, moreover, "interlinings, blottings, and marginal notes," made by such as had been heads of factions in the College from time to time, "so that no man could certainly affirm what was statute and what was not." The only way out of this confusion and contention, therefore, seemed to be the appointment of Royal Commissioners, who should hear and determine all controversies, during the imperfection of the Statutes of the College;—should have power to remove any Fellow or Officer as occasion should require;—should have authority to put fit persons in the room of such as might be ejected from, or vacate their Offices or Fellowships; and to frame a new set of Statutes for the future, and better government of the Society.





Accordingly a Commission, bearing date 13th July 1576, was issued; by which Lord Burghley, the Bishop of Ely, Dr Whitgift, the Master of Trinity, and some other Heads of Houses, were appointed special Visitors of St John's College. This Commission after reciting the perplexed and corrupted state of the Statutes of the College; the consequent disorders, and the inability of the regular Visitor to remedy those disorders; goes on to record, that out of her own regard for her noble Ancestress the Foundress of the College, and after the examples of pious Sovereigns, the Queen, "as a matter of mere good pleasure, and by her supreme Royal authority," constituted the parties named her "Delegates or Commissioners," for the correction of all kinds of abuses and offenders; for the enacting or remodelling of Statutes; and such other matters as might demand regulation. The Commissioners were also armed with power to inflict ecclesiastical censures, or even imprisonment on the contumacious and rebellious: and all this any "Statute of Parliament, any Act, Ordinance, Provision, Constitution, Restriction or Inhibition whatever; or any local Statute of the College, or other local Statutes, which parties might have sworn to observe, notwithstanding." The Commission, moreover, was to continue in force during the Royal pleasure, and so long the parties named in it were to be at liberty to visit the College as often as, and whenever it should seem to them, necessary¹. And as a matter

¹ Rymer, *Fœd.*, &c. Tom. xv. p. 762, &c. Strype, *Ann.* Vol. ii. p. 550, &c. *Whitgift*, Vol. i. p. 140, &c. *Grindal*, Vol. i. p. 296, &c.

of fact, we find that this Commission was used in after years to correct such disorders and abuses as happened to spring up in the College.

The more immediate and important act of the Visitors was the drawing up of New Statutes, for the present and future Government of the College, and these in due time were promulgated. With respect to these Statutes, it may be important to remark, that the completion of the abbreviated sentence "Reservat. semper nobis et successoribus nostris, &c.," which occurs at the conclusion of the Queen's Letter, both in the printed, and (as I am informed) MS. copies, is usually considered to be found in the following Clause of c. 50. "Reservata nobis nihilominus potestate vel adjiciendi, vel minuendi, seu reformandi, interpretandi, declarandi, mutandi, derogandi, tollendi, dispensandi, novaque rursus alia, si opus erit, statuendi, et edendi, non obstantibus his Statutis factis, et juramento firmatis." But if this be so, the power to change and modify the Statutes was in c. 50, reserved to Queen Elizabeth only, without any reference to such power being also vested in her Royal Successors'.

In this year also, two Scholars, Thomas Ravis, (afterwards Bishop of London, and one of the Translators of the Bible) and Edward Carow, were sent from Westminster School for the purpose of being admitted Students of Christ's Church Oxford, agreeably to the Statutes of that Society; but they found on their arrival in Oxford, that their prospects had been anticipated by some other parties



who had obtained a Royal Letter, recommending and requiring the Dean and Canons to admit the bearer to the vacant Studentship. An application was made to Lord Burghley both by Ravis and Carow, requesting him to see justice done to them; but my authority does not state how the matter ended: yet the circumstances, as already detailed, shew that Royal Letters, interfering with the regular course of elections to College Offices, were then common in Oxford, as we shall presently see they were also in Cambridge*.

We find during 1576, disturbances also in King's College, Cambridge. It appears that one of the Fellows (Lakes) was given to a love of dress: for he "wore under his gown a cut taffeta doublet of the fashion with his sleeves out, and a great pair of galligastien hose¹." For this "disguised

* Strype, *Ann.* Vol. II. Part i. p. 353, &c.

¹ The following illustrative description of the foppery here censured may not be uninteresting: it occurs as the 10th of the "Articles exhibited by the Masters of Colleges against Mr Beacon, Puresye, Nicholls, Browne and others," about the year 1572. "As touching the Statute for apparell none in all the University do more offend against that statute than the two proctors who should give best ensample, and these othair two Regents NICOLLS and BROWNE withe a fewe more of their adherents, who doe not only go verve disorderlie in Cambredge waring for the most part their hates and continually verve unsemly ruffes at their handes and greate Galligaskens and Barreld hooese stuffed with horse Tayles with skabilonions and knitt netherstockes to fine for schollers: but also most disguyssedlie theie goo abroade waringe such Apparell even at this time in London (although like hipocrites they come at this time outwardlie covered with the scholler's weed before your honnors) that a great sort of godly men and such as bear good will to the universitie are greatlie offended to se such unsemlic goinge of schollers

apparel so unmeet for a scholar," the Provost, Dr Roger Goade, reprov'd Lakes, and "punished him a week's Commons." This ever after so "stuck in his stomach," that he, and others of the Fellows accused the Provost to the Visitor of "hindring of learning in the College; and hinderance of the College revenues." The intestine jars of this Society, in fact, became so notorious as to attract the attention of Lord Burghley, the Chancellor of the University; who thereupon urged the Visitor of the College (Cooper, Bishop of Lincoln) to interfere; not to mention that some of the College, also, were anxious for the repressing of these disorders. Since, however, the Visitor could not at that time legally interfere, the statutable time since his last visitation not having elapsed, the more peaceable and orderly members of the College requested their Visitor's leave to seek redress of the higher authority. And to this the Bishop of Lincoln at length agreed. The disputes accordingly were heard before Lord Burghley and others, as Commissioners for Ecclesiastical Causes, if we may judge from the salutary nature of the remedies applied: for after a full hearing of the matter, the Provost was declared innocent of the charges brought against him; whilst of his accusers, some were censured; and some imprisoned in the *Gate-House*; and all were obliged to give in their recantations and submissions¹.

schollers and especially of Proctors and ministers (through whose lewde ensample and behaviour the universitie is evell spokenn of and poor schollers less respected.)" *Collection of Letters, &c. from the MSS. Library of Corpus Christi College, &c.* p. 402.

¹ Strype, *Ann.* Vol. II. Part II. p. 36, et seq.



In this year, moreover, we find one Rockery, Fellow of Queens' College, Cambridge, in disgrace for "refusing to wear either the ecclesiastical habit, or the University Cap." And so "inconformable had he been four years before," that he "was cast out of the College by Command of the Queens' Council".

A vacancy also occurring during this year in the Mastership of St John's College, Cambridge, and a faction having grown up between the Senior and Junior Fellows of that Society, respecting supplying the vacant office, the persons who had been commissioned a short time ago to visit St John's, and to reform the Statutes, &c., recommended Mr Howland to the Queen as a proper person to succeed to the Mastership in question. Her Majesty in consequence directed that Mr Howland should be propounded for their Master to the College electors in her name; and that "if the younger sort were set upon maintaining their faction," then that the Visitors should by their own authority place Howland in the Mastership. So he became Master of St John's³.

The year following, a dispute arose between 1577.
Mr William Wilson, who had been chosen Rector of Lincoln College, Oxford, and the Bishop of Lincoln, who, as Visitor of that College, refused to admit Mr W. to the Rectorship. On this Mr Wilson appealed to Grindal, Archbishop of Canterbury; who, through his Official, commanded

² Strype, *Ann.* Vol. II. Part II. p. 58.

³ Strype, *Whitgift*, Vol. I. p. 156.

the Bishop to admit Mr W. to the office to which the latter had been elected. This appeal to the Archbishop was regarded as a breach of the oath Mr W. had taken to the University; and the interference of the Archbishop's Official, was regarded as an infringement of the University privileges. Accordingly the matter was brought before the Government; and the result was, that a Royal Commission was issued to ascertain the merits of the matter in dispute. The terms of the Commission set forth, that it rested its validity simply on the Royal Will, and plenitude of power;—that it authorised the Commissioners named in it, to call before them and summarily examine any persons that might be required to give evidence;—and, finally, to determine the matters in dispute, any Statutes, Canons, and Customs, &c. to the contrary notwithstanding¹.

The tenor and occasion of issuing this Commission shew that it was then considered part of the Royal Prerogative to supersede the authority of the Archbishop of the province, of the Chancellor of the Universities, and of the local Visitor of any College.

1578.

From a letter, addressed by the Vice-Chancellor and Heads of Houses to their Chancellor (Lord Burghley), we learn that, about this time, the practice of granting Mandamuses, for admitting persons to Fellowships in Cambridge, had become so common, that it was deemed necessary to pro-

¹ Rymer, *Fœdera*, Tom. xv. p. 773, &c. Johnston, *Visitation Power*, &c. p. 244, &c. Ayliffe, *State of Oxford*, &c., Vol. II. Appendix, p. cxvii.





test against such a perversion of our Institutions². It is manifest, at the same time, that none thought of disputing the right of the Crown to grant Mandamuses for the purpose just specified: and the wary circumlocution used by the Vice-Chancellor and Heads, in their letter to Cecil, shews that it was then a ticklish business even to hint at this abuse of the Royal Prerogative.

In 1580, we find William Wilks, one of the 1580. Fellows of Merton College, Oxford, appealing to the Privy Council, instead of to the Visitor of the College, for redress in a matter in which he considered that Society to have exceeded their statutable power³. The Lords of the Council referred the case of Wilks to the Archbishop of Canterbury, as the Visitor of the College, by whom it was accordingly decided. It is clear, however, that if the Privy Council had chosen to interfere, it was considered that they had legal authority for doing so.

This same year, also, the Bishop of Ely, as Visitor of St John's College, Cambridge, wrote to Lord Burghley, urging him to obtain the completion of the Statutes of that College; which the Royal Commissioners three years before had undertaken to provide: for those Commissioners having set aside the old Statutes, without providing others, the consequence was that there was "no government, no order, no obedience, no reverence; all went into confusion." Therefore it was that the

² Strype, *Ann.* Vol. II. Part ii. p. 629, et seq.

³ Strype, *Grindal*, pp. 270, et seq. 296.

Bishop was desirous, before his death, to have the Statutes completed, and confirmed by the Queen¹.

This year, also, an application was made to Cecil by Dr Fulke, then Vice-Chancellor of Cambridge, expressing it as the opinion of himself and others, that it would be desirable to send Commissioners again to that University. Fulke's letter is dated Oct. 10, 1582, and relates primarily to the state of Caius College; but goes on to observe, that

“as the reformation of one College is not sufficient, where the whole body of the University is out of frame..... it were most expedient the same were reformed in the whole, and in divers Colleges specially, by a general Commission of Visitation,—to supply the imperfections of all Statutes, both of the University, and of sundry Colleges wherein the same is needful².”

And though no Royal Commission was granted at that time, yet it is clear, that, for the purpose of changing and amending Statutes, such a Royal Commission was considered indispensable.

1584. In the year 1584, letters were received from the Chancellor of Oxford, stating that “the Queen had been informed that Degrees were conferred in that University by Dispensation, and without reference to learning and desert;” and adding that Her Majesty “ordered and commanded” that this neglect of the University Statutes should forthwith be amended³.

¹ Strype, *Ann.* Vol. II. Part ii. p. 389, et seq.

² Johnston, *The King's Visitation Power Asserted*, p. 246, &c.

³ Wood, *Hist. et Antiq. Univer. Oxon.* lib. i. p. 300.

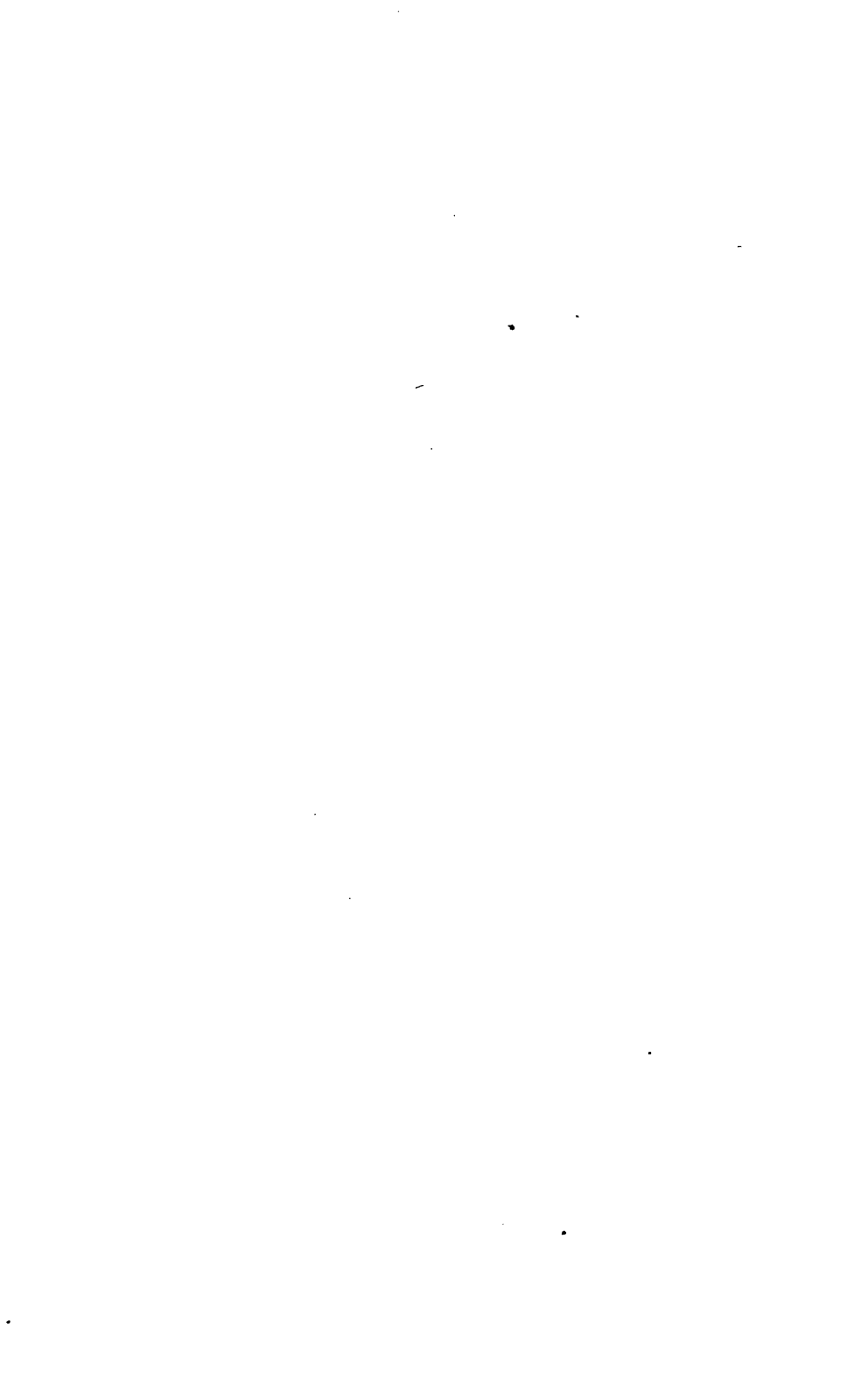
The plague, which, in 1592, made its appearance in Oxford, having been attributed to the crowding together of great numbers in the Play-house there, complaints were made to the Chancellor and Privy Council. Orders were, in consequence, issued to the Vice-Chancellor and Heads of Houses, desiring them not thenceforth to admit stage-players to come within the precincts of the University: and this not only lest the Students should suffer in their health, but in their morals. We are thus afforded another instance of the interference of the Privy Council with University affairs'. 1592.

In the year 1595, there occurred a disturbance in the University of Cambridge, which served to shew the kind of authority which was claimed and exercised by the Queen's Ecclesiastical Commissioners. William Barret, Fellow of Caius College, preached a Sermon at St Mary's; in which he spoke against the absolute decree of reprobation; against the certainty of faith; the indefectibility of grace; and certain other dogmas, as held by the school of Calvin. The consequence was, that the preacher gave such offence to many of the Heads and other Members of the University, that he was summoned before the Vice-Chancellor; charged with venting false doctrines, and required to retract them. This, after much persuasion and threats, he consented to do; but his recantation was "done and read in so very unreverend, profane, and impudent manner," that, 1595.

* Wood, *Hist. et Antiq. Univ. Oxon.* p. 306.

according to the judgment of his accusers, it only added fresh offence to his former delinquency. It appears, however, that Barret betook himself for protection to Archbishop Whitgift; complaining that he had been libelled and harshly treated; and submitting himself "in all humility to his Grace's determination;" desiring the Archbishop to be "his gracious Lord and Patron against them that sought his utter undoing." This so moved the Archbishop, that he took Barret's part; and wrote to the Vice-Chancellor, blaming him for having proceeded against the offender with unusual harshness; and for having undertaken to give judgment in a matter which, relating to Religion, it did not fall within the province of the University Authorities to decide. The countenance thus afforded to Barret encouraged him to present a Petition to the Archbishop, desiring his Grace "to grant his honorable Letters unto the Masters of Colleges, for stay of their further proceedings." This transference of the case by Barret from the University to the Archbishop, was, however, resisted by the Heads, on the plea of their Privileges. The Archbishop, on the other hand, whilst asserting that he would yield to none in "affection for the University," and "in carefulness for the preservation of its privileges," proceeds to inform the Heads,

"That his predecessor, Archbishop Parker, did, by virtue of the Commission for Causes Ecclesiastical, deal with divers in that University; as was well known to some that were now Heads. That he had himself, with others, sat as Commissioner Ecclesiastical, sundry times in St





Mary's; as was notoriously known; and that by authority had censured, in matters of Religion, as well Scholars as others. That none well-advised could, or dare doubt, whether Her Majesty, by the Laws of this realm, or by Her prerogative Royal, might grant such a Commission or no. That it was a vain conceit for the Heads to suppose that they had authority in matters of controversy; the Law expressly laying that upon Her Majesty, and upon such as she should by Commission appoint to that purpose."

The Heads, however, still temperately insisted on their Privileges, though, in the end, they found it necessary to apply to Lord Burghley, to request his good offices to bring about a reconciliation between the University and the Archbishop. The matter ended by the sending of a Petition from the "Heads of Colleges and whole body of the University, some few excepted," beseeching him to interfere to appease their troubles and controversies: and accordingly, by the Archbishop's advice and mediation, "the Heads made a conclusion with Barret".

Soon afterwards Dr Whitaker, the Master of St John's College and Regius Professor of Divinity, was sent by the Heads of the University to the Archbishop and some other learned Divines, to consult with them for the pacification of these theological disputes; and to "labour, (as Whitaker signified to Lord Burghley) with the chief Governor of Ecclesiastical Causes under Her Majesty, for establishing a peaceable order". From whence

¹ Fuller, *History of the University of Cambridge*, p. 150, et seq. Strype, *Whitgift*, Vol. II. p. 229, et seq.

² Ibid. p. 278, et seq.

it appears that the authority of the Ecclesiastical Commissioners was, after all, acknowledged to be paramount in these University affairs.

Towards the close of the same year Dr Whitaker died; and in consequence of the disagreement among the Fellows of St John's respecting the election of a new Master, Lord Burghley wrote to them, desiring them, at the Queen's command, to forbear all manner of proceeding in the election of a Master, until Her Majesty might be further informed what were meet to be done in that Election.

"Which Her Majesty's commandment," he observes, "(she being not only the Foundress of the College, but Supreme Governor in all causes and over all persons in her dominions, as well ecclesiastical as civil) she looks to have obeyed...I do by these presents reiterate her Royal commandment unto you; charging you upon pain of your deprivation, and Her Majesty's indignation, to forbear to proceed to any election, notwithstanding any local Statute of that House; wherewith Her Majesty hath authority to dispense, until Her Majesty's further Royal pleasure shall be signified unto you."

In another letter written by Lord Burghley, a few days later, to the Vice-Chancellor and Heads, he informs them that he did "as their Chancellor, and by Her Majesty's command, desire them that they should in some assembly call the President and Fellows of St John's College, and some convenient equal number of the Fellows that seem to be divided in opinion, to whom Her Majesty's princely and regal resolution should be declared," viz. that if the President and Fellows aforesaid "would have the choice of their Master by an Election, it was



free for them to choose either Mr Dr Claiten or Mr Stanten:" but that if "they refused to promise and yield thereunto," then the Vice-Chancellor and Heads were to enjoin the President and Fellows in Her Majesty's name, to "forbear from proceeding to any manner of election. So as Her Majesty may, according to her Royal authority, having the charge of government of the Church, for the Commonwealth of the College (whereof she is inevitable Foundatrice) name some one to be Master there'."

We thus see, that the Queen claimed the right to appoint to the Mastership of St John's, generally in virtue of her Royal Prerogative; and specially as the representative of the Foundress: laying claim, also, to the power of dispensing with all local Statutes.

In the December of this year, another Preacher before the University of Cambridge drew upon himself the attention of his superiors by the offensive handling of that text, "My house shall be called the house of prayer, &c." The preacher was Covell, Fellow of Queens' College, who "took occasion to rave and inveigh against those that made *speluncam latronum* of the Church; charging the Noblemen of this realm especially, and in sort, also, the Bishops." The Vice-Chancellor thought it necessary to take notice of the Sermon, and acquainted both the Chancellor and the Archbishop with the matter. The latter "was minded, therefore, to bring Covell before the Commissioners Ecclesiastical," for what he had preached; and accordingly re-

¹ Fuller, *History of the University of Cambridge*, pp. 151, et seq. Strype, *Ann.* Vol. iv. p. 324, et seq.

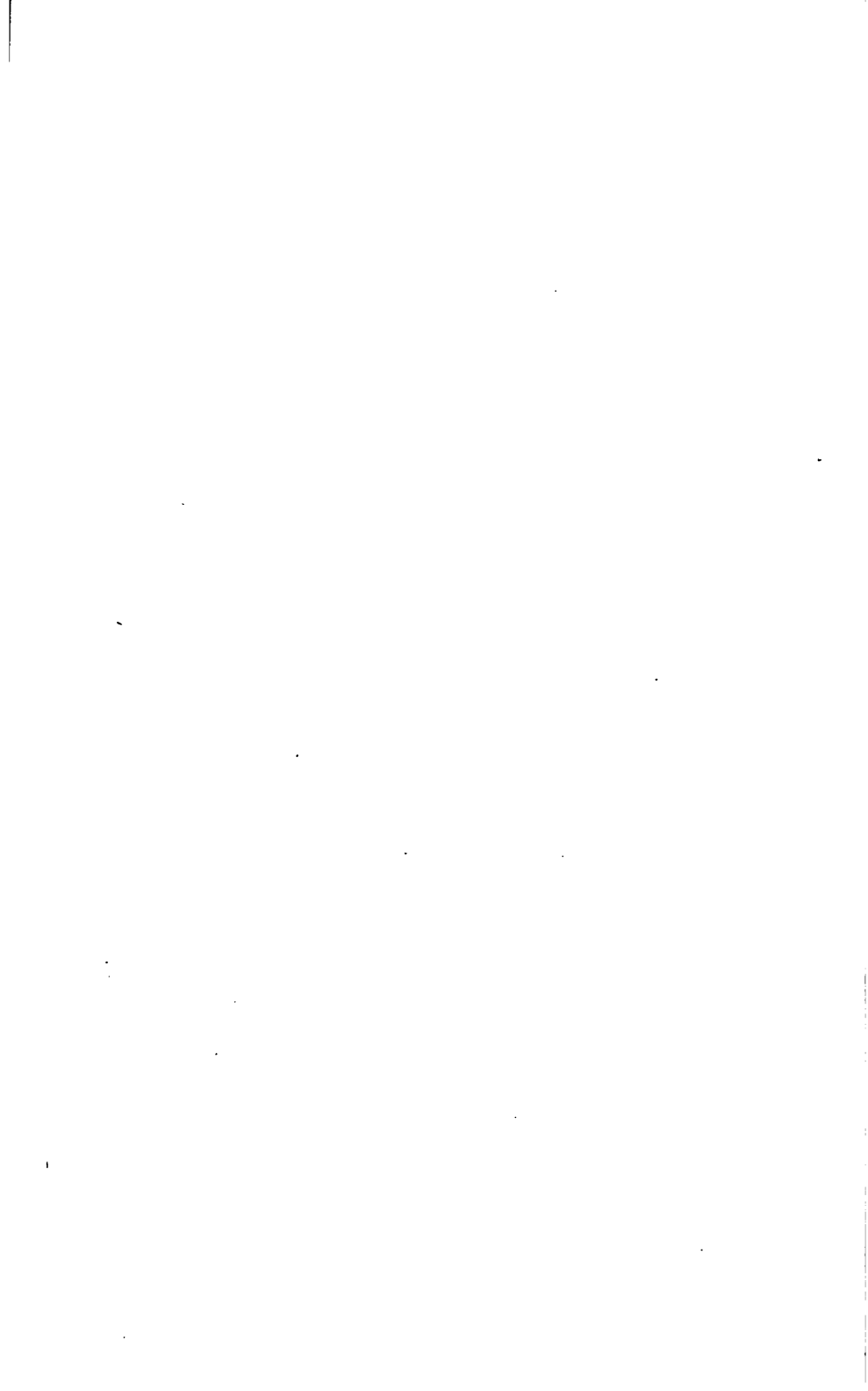
quired the Vice-Chancellor to send the offender up to Lambeth. With this demand, however, the Vice-Chancellor hesitated to comply, "lest the precedent might be hardly thought as a breach of their privileges." At the same time he proposed to convene Covell "before himself, and such Heads as were at home." To this the Archbishop assented; stating that he would rather the matter were settled in Cambridge, if it might be so. That Covell was actually called before the Vice-Chancellor and Heads, and not the Archbishop, we find from a letter addressed to the Chancellor. This affair, however, furnishes another instance of the power claimed by the Ecclesiastical Commissioners to interfere with the Universities; and of the indisposition to press their authority when it was firmly resisted¹.

1600. We find that a few years later the Archbishop had occasion again to interfere in the University of Cambridge. The Heads had suspended a Mr Butler for having offended against some of the Statutes. This person applied to the Archbishop, for protection, who, out of kindness, wrote to the Heads, on behalf of the offender. The University however, stood upon their privileges; and though Butler's suspension was withdrawn on his submission, it was simply done as a matter of personal favour toward the Bishop².

We have now arrived at the close of the long reign of Queen Elizabeth, by which time the

¹ Strype, *Whitgift*, Vol. II. p. 319. *Ann.* Vol. IV. p. 323.

² *Ibid.* Vol. II. p. 436.



affairs of the Universities and of Colleges seem to have assumed a less turbulent aspect. We find, as a natural consequence, that subsequent to that period, the interferences of the Crown, for the regulation of the Universities, were far less frequent. Nevertheless, the Parliament which recognised the right of James I. to the Throne had scarcely been prorogued³, when that Sovereign addressed a Letter to the Chancellor and Vice-Chancellor of the University of Cambridge; giving certain directions for the furthering and maintenance of discipline there. By "virtue" of that Letter the said Chancellor and Vice-Chancellor were "authorised" as well as commanded, "wholly and altogether, to restrain and inhibit" certain games and practices therein specified: and, moreover, to imprison all who should "refuse peaceably to obey their commands," in the matters to which the Letter referred⁴. 1604.

On the 30th of June, 1613, King James addressed another Letter to the University of Cambridge, in which he expressed his pleasure that by a public Ordinance and Decree of that body, it should be "decreed and ordained, that, from 1613.

³ For nearly a year after James took possession of the Throne of England, the legal title to the Crown was, by existing Statutes, vested in Lord Seymour, as the heir of Mary, youngest sister of Henry VIII. The Parliament which recognised and confirmed James's pretensions did not meet till March 19, 1603—4, and was prorogued on the 7th of July following; whereas Queen Elizabeth died March 24, 1602—3. Nicolas, *Literary Remains of Lady Jane Grey*, p. cxlvi.

⁴ *Stat. Acad. Cant.* p. 276. Dyer, *Privileges of the University*, Vol. i. p. 343.

henceforth, no man should have granted unto him the Degree either of Bachelor in Divinity, or of Doctor in any faculty," unless he should first subscribe the Three Articles contained in the 36th Canon of 1603. A Grace to carry into effect the Royal directions was accordingly passed on the 7th of the following month. It is to be observed, also, that the King states in his Letter, that the "University of Oxford had long since made a Public Ordinance and Constitution in this behalf¹." Yet Wood does not mention the promulgation of similar Injunctions in Oxford, till the year 1616; nor does Heylyn, in his *Life of Archbishop Laud*.

1616. Three years afterwards, we find the King giving certain oral "Directions to the Vice-Chancellor and Heads of Houses, in the University of Cambridge," requiring, among other things, that all who took any Degree in the Schools should subscribe to the Three Articles before alluded to: that subscription, by the Grace of 1613, having reference only to those who take the Degree of Bachelor in Divinity, or that of Doctor in any faculty. It may only further be necessary to observe respecting these Directions, that the Sign Manual was considered to "give strength and command for the due observing every thing in them specified;" for though no Grace was passed in the Senate to sanction these Directions, they

¹ *Stat. Acad. Cant.* pp. 279, 371. *Historical Account of the Oaths and Subscription required in the University of Cambridge.* p. 36, et seq.



were, nevertheless, acted upon. This year similar Directions were sent to the University of Oxford².

The next Royal Letter is without date; but it required the Chancellor, Vice-Chancellor, and Heads of Houses in the University of Cambridge, to observe, and see that others observed, certain Injunctions, which are thereafter given. The first commands the observance of all Ecclesiastical Laws, Canons, and Constitutions of the Church of England, "without immutation upon any pretence of local Statutes:" and so far, therefore, there is a power claimed to dispense with the obligation of such Statutes. There is also set up a claim of Supremacy in all matters relating to individual Colleges, as well as to the University at large; for the last of the Injunctions commands, that a Copy of the King's Directions should be "delivered to the Master of every College, requiring that he deliver the same, or a Copy thereof, to the special Visitor of his said College"—in order that such Visitor might see the Royal Commands and Ordinances "duly observed³."

In the year 1629, King Charles I. addressed 1629.
"Injunctions, Orders, and Directions to the Vice-Chancellor and Heads of Houses in the University of Cambridge, for the better government of the same University." These, among other things, re-

² *Stat. Acad. Cant.* p. 282, 478, et seq. Dyer, Vol. i. p. 347, &c. *Historical Account of the Oaths, &c.* p. 39, et seq. Wood, *Hist. et Ant. Oxon. Lib.* i. p. 322. Wilkins, *Concilia*, Vol. iv. p. 459. Heylyn, *Life of Laud*, p. 66.

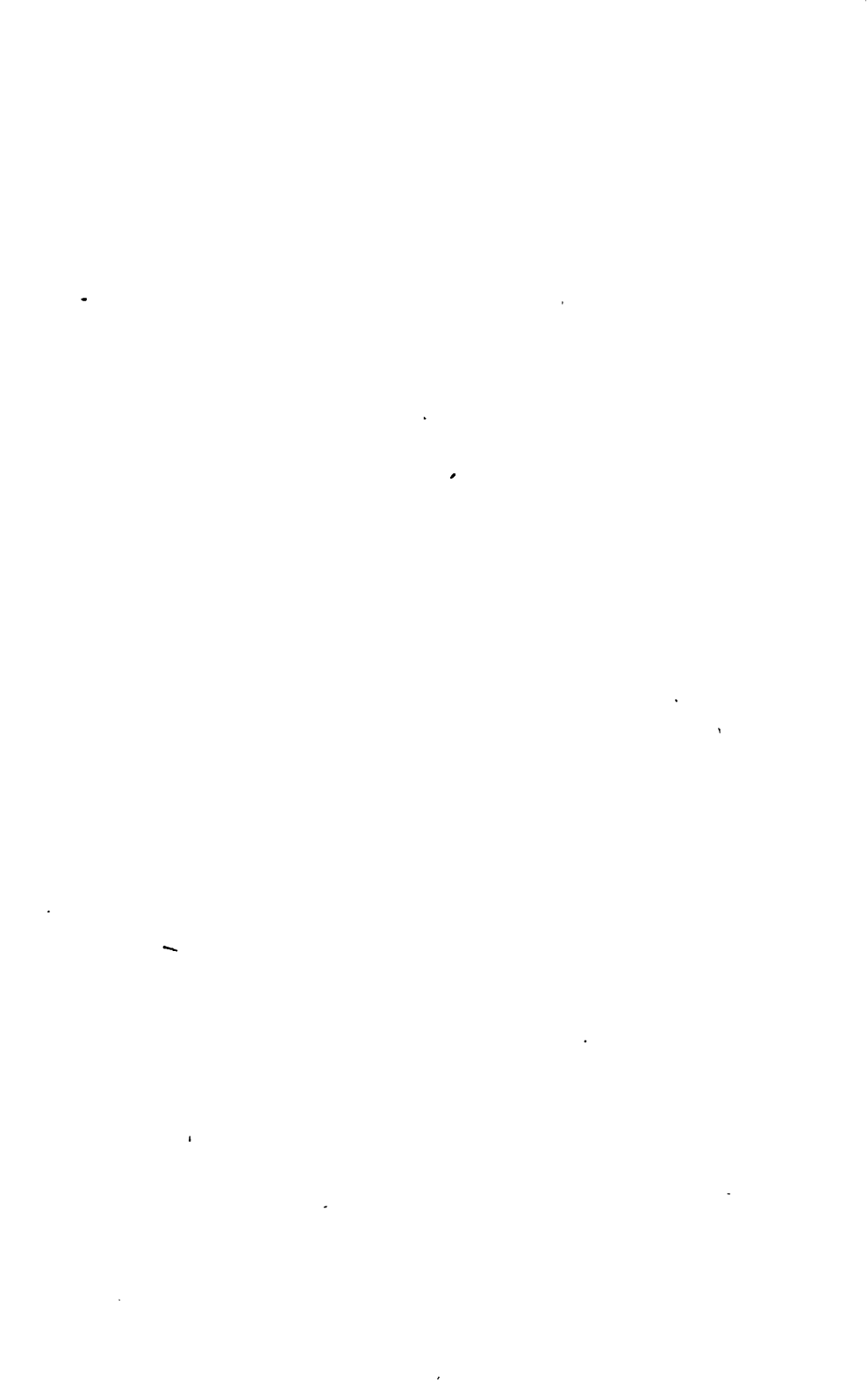
³ *Stat. Acad. Cant.* pp. 283, et seq. Dyer, *Privileges of the University of Cambridge*. Vol. i. pp. 349, et seq.

quired the due observance and execution of all such Orders as had been given to the University by King James; and conclude by commanding that a Copy of the Directions should be delivered to the Master of each College, to be by him published, and also registered in the College Register¹. Thus did this Sovereign, also, claim the right of Supremacy over individual Corporations, as well as over the University generally. So far, however, as regards the Society to which the writer belongs, the King's Injunctions were, in one respect, disregarded; for they do not appear in the Register of the College.

1631. During the year 1631, several preachers in Oxford were called to account for charging the Bishops with *Arminianism*. Three of the parties so offending were, Mr Ford of Magdalene Hall; Mr Thorne of Balliol College; and Mr Hodges, of Exeter College. For this, they were called before the Vice-Chancellor, who demanded a Copy of their Sermons; but that was refused, and the parties appealed to Convocation. The Proctors received the appeal; and were deliberating about appointing Delegates to whom the matter should be referred, when the Vice-Chancellor appealed to the King, then at Woodstock; and the case was heard before His Majesty and all the Lords of his Council. This produced a Letter from the King to the Vice-Chancellor, dated 26th Aug. 1631; the tenor of which was, that on the receipt of it, the Vice-Chancellor should call a Convocation, for perform-

¹ *Stat. Acad. Cant.* p. 288, et seq. Dyer, Vol. i. p. 354, et seq.





ing and registering the Royal Sentence and Decrees. These were—(1) That the offensive Preachers should be banished from the University; that the two Proctors should resign their office; and that two others should be chosen in their stead, (2) That the Vice-Chancellor should be empowered to demand, from any Preacher, a Copy of his Sermon, attested on oath. That any person, whom the Vice-Chancellor should desire, by a Bedell, to go to prison for alleged demerits, should without delay betake himself to goal; or else be expelled the University, and censured as a disturber of the Public Peace.—These pithy mandates seem to have met with the favour and obedience of Convocation; for on the 26th of Aug. the two indiscreet Proctors resigned their office. Two others were then elected; and immediately after the Convocation had been dissolved, a Notice was fixed on the Doors of St Mary's Church, commanding the contumacious Preachers to depart the University within four days; which they accordingly did. They were, nevertheless, escorted out of the city by an immense concourse of Gownsmen, as might have been expected. In about a year afterwards, however, Hodges, having acknowledged his indiscretion and petitioned the King to pardon him, was, by Royal Command, restored to his former rank in the University*.

The next Royal Letter, addressed to the Vice-Chancellor, and Heads of Colleges in Cambridge, 1633.

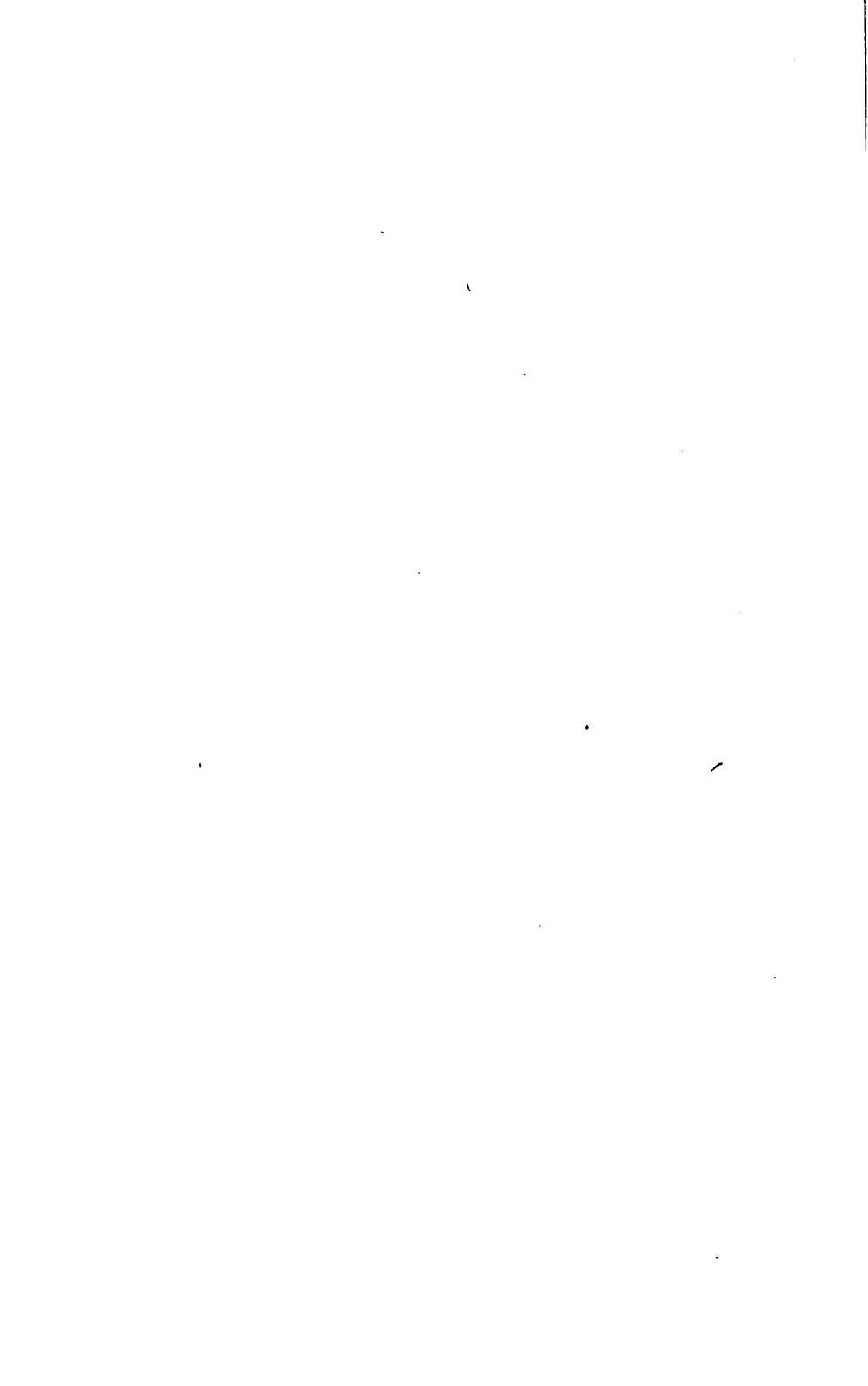
* Wood, *Hist. et Ant. Oxon. Lib.* i. p. 334, et seq. Ayliffe, Vol. i. p. 210, et seq. Johnston, *King's Visitation Power*, &c. p. 249, &c. *Archbishop Laud's Diary*, Aug. 23, 1631.

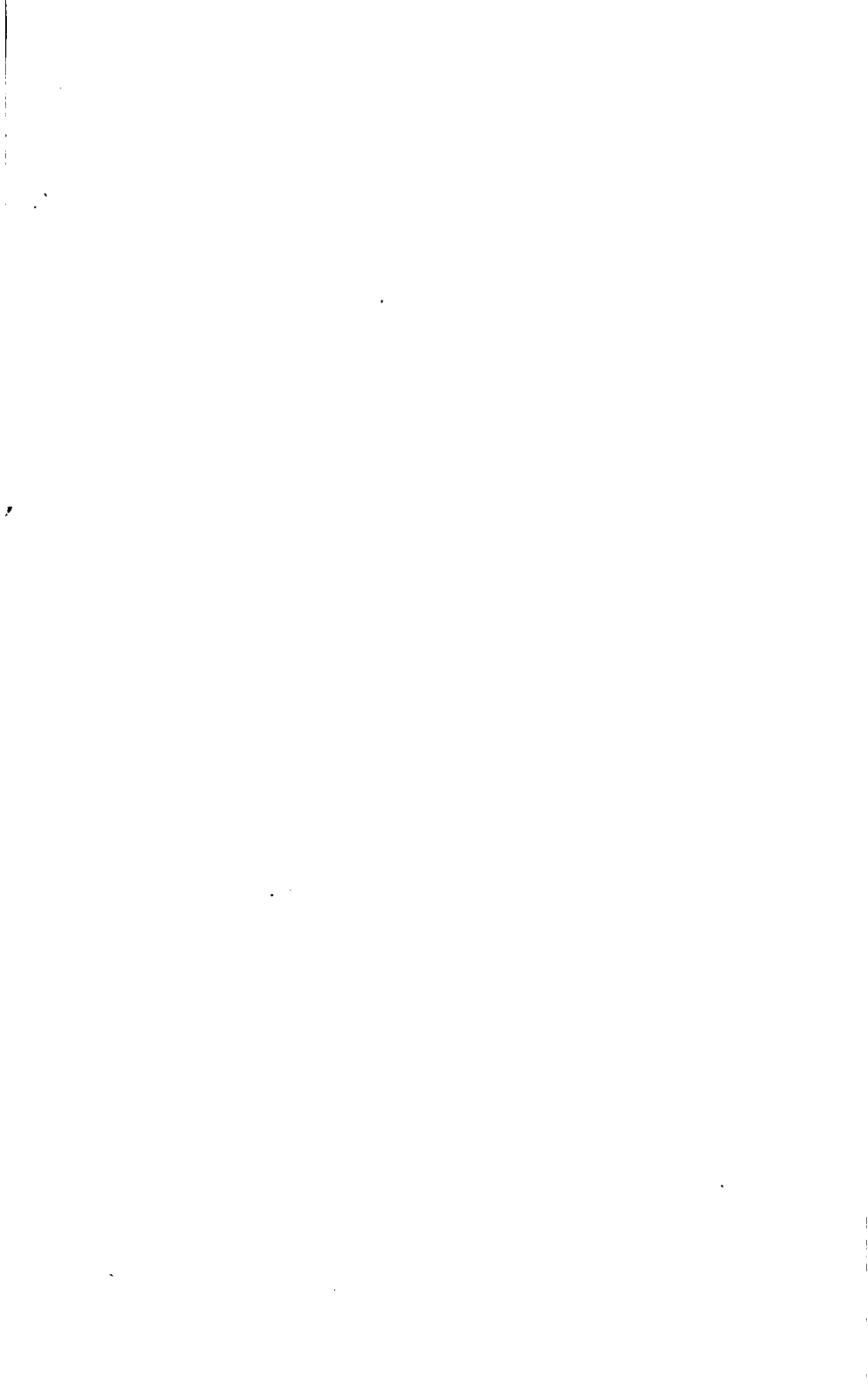
is dated 27th Sept. 1633. It claims for the Crown the right to interfere with every College; for after affirming it to be the will of the King to reform whatever may be found amiss in the University, the Letter goes on to enjoin upon the Members of every College, the observance of their local Statutes. The claim of the Crown to be the Visitor of every College in the University, is thus implicitly asserted¹.

1634. In the following year, a Royal Letter was received by the Master and Fellows of St John's College, Cambridge; the purport of the Letter being to alter the Statutes of that Society. After, therefore, reciting that Queen Elizabeth had required, that all the Fellows of St John's, except two, should take Priest's Orders, and that thus no provision had been made for the Study of the Law, the King goes on to declare his will to be, that, for the future, two of the Fellows might follow that profession. The singularity of this Letter is, that in it the King states, that he regarded himself as enabled to make the contemplated change in the Foundation, because "power and authority for that purpose had been reserved to the Sovereigns of England by the local Statutes themselves²." Yet this reservation was not made by the Foundress, but (as we have seen) by Queen Elizabeth; and, as a matter of fact, Charles the First had, in his own person, precisely the same authority to make changes in the Statutes of St John's College, as

¹ *Stat. Acad. Cant.* p. 290.

² *Fifth Report of the Select Committee on Education*, p. 463.





the Sovereign had, who professed to reserve that power to the Kings of England. If it had so pleased him, he could have sent a Commission to re-model all the Statutes of the College, just as Queen Elizabeth did; for he had the same pretence of being Heir to the Countess of Richmond as that Sovereign had; and the Act of Supremacy conferred as much authority on the Kingly Successors of Elizabeth as it did on Her Majesty.

Two years later, there occurred a dispute between the Archbishop of Canterbury and the two Universities, respecting the claim which that Pre-late had set up to visit both Oxford and Cambridge *jure metropolitico*. The matter was referred to the King in Council, when the Universities urged their exemption from Episcopal Visitation by Privileges conferred on them by Papal Bulls, by Charters, by Prescription, and by 25 Hen. VIII. c. 19. 21. That, however, which falls within the design of these pages, is only further to state, that, in the arguments urged on the occasion, "it was on all sides acknowledged to be the undoubted right of the Crown to visit the said Universities, whensoever his Majesty pleaseth³." 1636.

In this year, also, there was a Royal Confirmation of the Statutes of the University of Oxford. Owing to the lapse of years, multitude of interpretations, and other like causes, those Statutes required remodelling, altering, and explaining;

³ Rymer, Tom. xx. pp. 99, et seq. Wilkins, *Concilia*, Vol. iv. pp. 525, et seq. Rushworth, *Hist. Collections*, Part ii. pp. 325—332. Baker, *MSS.* Vol. vi. pp. 157, et seq. Collier, *Eccles. Hist.* Vol. II. p. 766.

and so, for effecting this purpose, certain eminent men were, in the first instance, appointed, who should make such a selection from the old, or more recent Statutes, and add such others, as should render the whole more suited to the then state of the University. The body of Statutes, thus collected, was then carefully revised by the Heads of Houses; after that, submitted to Convocation on the 20th Aug. 1633; and finally, revised and sanctioned by Archbishop Laud, the Chancellor of the University. The Statutes were then printed; and a Copy given to every College and Hall, in order to ascertain, by the actual working of them, how far they met the requirements of the University. At the end of a year, such corrections having been applied to the Statutes as seemed necessary; the whole were transcribed on Parchment, and formally ratified and sealed by Laud, both in his Archiepiscopal capacity, and that of Chancellor of the University. It was found, however, that, with all the pains that had been taken in this matter, the Statutes were considered to be without legal authority; and it was considered necessary, therefore, to have them confirmed by the Crown. This was effected in June 1633. The King's Letter, which is prefixed to the Statutes, recites the circumstances under which they had been compiled, and then goes on to state, that "out of special favour, and mere good pleasure, the King for himself, his Heirs and Successors, and by those his Letters Patents, accepted, approved, ratified, and confirmed the entire body of Statutes, and each and every Statute separately;





abolishing and rescinding every other of the ancient Statutes, which, by the present Code, were judged and decided to be abolished and rescinded." The King also directed, that all and every Head of a College or Hall should subscribe the new Statutes, as a token of his approbation of them; and of his acknowledgement of their authority; and that all Masters and Scholars, of whatsoever standing or degree, should within six months take an Oath to obey these Statutes. Then follows the concluding and usual assertion of the Royal dispensing power, "Aliquo Actu, Statuto, Ordinatione, &c. non obstante." In fact, the Kingly Supremacy is as fully claimed in this document, as in any of those with which we have hitherto met, and with as much reason, for the 1 Eliz. c. 1. was still in force. It seems to have been thought necessary; however, that the Body of Statutes, though thus sanctioned, should be ratified by the Convocation; and that was accordingly done on the 22d of June, 1636¹.

In the year 1640, a material change was made 1640. in the Law as regarded the Kingly power. An Act passed (16 Charles I. c. x.) "for the regulating of the Privy Council; and for taking away the Court commonly called the Star-Chamber." By this Statute all such matters as affected the liberty and estate of the subject, and which had hitherto been taken cognizance of by the Privy Council,

¹ *Stat. Acad. Oxon.* Rymer, Tom. xx. p. 23, &c. Wood, *Hist. et Antiq. Oxon. Lib.* i. pp. 335, 337—339, 342. Heylyn, *Life of Laud*, pp. 297, 298.

or the Star-Chamber, were referred, for redress, to the Common Law of the land. In the same Parliament, moreover, an Act (16 Charles I. c. xi.) was passed for "repeal of the Branch of a Statute, *primo Elizabethæ*, concerning Commissioners for Causes Ecclesiastical." This Act recites 1 Eliz. c. 1. sect. 18; and, also, that "by colour of some words in the aforesaid Branch of the said Act," Commissioners had been authorised to do whatever the tenor of Royal Letters Patents may direct; and that for the "repressing and preventing" of such Commissions it was enacted,

"That the foresaid Branch, Clause, Article or Sentence contained in the said Act, and every Word, Matter and Thing contained in that Branch, Clause, Article or Sentence shall from henceforth be repealed, annulled, revoked, annihilated, and utterly made void for ever."

With the passing of these two Acts, therefore, disappeared all the Royal power to visit the Universities by Commissions similar to those noticed in the preceding pages; as, also, that unlimited kind of interference which the Privy Council had heretofore been accustomed to regard as warranted by Law, or Prescription: and there remained only to the Crown that personal authority which had been exercised as a matter of Prerogative, in the form of Mandates, Injunctions, and Dispensations, promulgated by the Sovereign himself.

1647.

It appears, however, that the Crown was still regarded as possessing the right to visit the Universities by Commission; for when in 1647, an Ordinance was passed, to appoint "Visitors for the

University of Oxford," that University refused to recognise the authority of the Parliamentary Commissioners, on the plea that the right of Visitation belonged to none but "the King, or such as were immediately sent by His Majesty." In a pamphlet, also, put forth at the time, it was maintained that the right of visiting the University of Oxford was "only in the King's Majesty ; and that it was exempt from all other jurisdiction, both by reason of its foundation, in regard that all Societies whereof the King or his Predecessors were Founders, are only visitable by the King, by the Common Law of this Realme : and, secondly, by reason of several Grants of Exemption." And to prove "That all power of Visitation is given only to such as shall have immediate authority by the King's Commission," a reference is made to the 25 Hen. VIII. c. 21, in the 20th section of which Act, (as we have seen,) a power was conceded to the King, of visiting "Colleges, Hospitals, &c." which till that time were exempt from ordinary jurisdiction¹.

In those days when, true to human nature, the patrons of civil and religious liberty regarded power as synonymous with right, it would of course have been an idle waste of public time to have discussed the validity of the plea then urged by the advocates for University Privileges ; and after that time there was no practical decision of the question by a Royal Visitation of either Oxford or Cambridge,

¹ Scobell, *Collect. of Acts and Ordinances*, Ann. 1647. Wood, *Hist. et Ant. Oxon.* Lib. 1. p. 389. Ayliffe, *Stat. of the University of Oxford*, Vol. 1. p. 229. *The Privileges of the University of Oxford in point of Visitation, &c.*, 1647. pp. 2, et seq.

- until the reign of James II. There are, however, many instances on record of the exercise of the personal authority of the Crown, during Charles the Second's reign, so far at least as regards Cambridge.
1661. Thus, we find the Crown interfering to admit Magdalene, Emmanuel, and Sidney Sussex Colleges to
1666. equal privileges with the rest of the Colleges, in the nomination of Officers:—to extend the provisions of
1667. a Statute:—to regulate the keeping of Exercises in the Schools:—to rectify certain alleged disorders in
1669. the Senate:—to claim the right of interpreting Statutes, and to command the election of a Chancellor:—to enjoin certain matters of discipline:—to demand that a Royal Order should be observed as a Statute of the University:—to dispense with the Statutes and Oath connected with the office
1679. of the Lady Margaret's Preacher. There was an Appeal, also, to the Privy Council respecting the validity of the election of an Esquire Bedell; and a decision given by that Court with reference to the matter in dispute¹. It is not considered necessary to enter into the particulars of these various instances of Royal interference, because they are so similar to those which have been detailed as occurring between 1604 and 1640, both as regards the subject-matter, and the principles involved. It is, however, of importance to remark, that in the year following the Restoration of Charles II., certain portions of 1 Chas. I. c. 10. were repealed; and that the Parliament then declared, that though other parts of the Act in question were not revived,

¹ *Stat. Acad. Cant.* pp. 291—311.

it yet was not "intended to abridge the King's Majesty's Supremacy in Ecclesiastical matters and affairs".

In consequence, therefore, of the change effected by 13 Charles II. c. 12, the Royal Prerogative, as respected the Universities, was considered to stand on the accession of James II. precisely as it did in the reign of Charles I., before the 1 Eliz. c. 1. was repealed². An opportunity for trying the extent of this Prerogative soon occurred to James. 1685.

The Mastership of Sidney Sussex College, Cambridge, having become vacant by the death of Dr Minshull, in December 1686, the King decided upon appointing Mr Joshua Basset, Fellow of Caius College, to that office, by Royal Mandate³. This person is described by a contemporary as being "such a mongrell Papist, who had so many nostrums in his religion, that no part of the Roman Church could own him if we may be allowed to know their Doctrines; so that had he lived in a country where the Inquisition reigns, and had declared his opinions, he would have been taken up for a heretick." He had, just before his appointment, "given a notable specimen," it is added, "of his violence in serving the ends of Popery, by prosecuting Mr Spence, of Jesus, for a speech on the 5th of November, before the University, wherein he had satyrically enough treated the Church of 1686.

² 13 Charles II. c. 12.

³ See p. 58.

⁴ Baker, MSS. Vol. x. p. 416.

Rome. By threatening him with the resentment of the Court he brought him to a public recantation in the Senate-House. The disgrace of which struck so much upon his spirits, that it turned his head, and he continues distracted to this day." Such was the person whom James, "against the College Statutes and the Laws of the land, by a high stretch of his dispensing power, forced upon" the Fellows of Sidney. It is mentioned, also, as an instance of further "injustice, that the King dispensed with Basset's taking the Oath of a Master, and he never took any, and so was let loose upon" the Fellows, "to do what he pleased with them¹." But the Papists, though dominant in almost all other places, had not yet been able to obtain a public footing in the Universities, and it was resolved, therefore, to introduce Romanists into those Institutions, under the usual plea of familiarising persons of different religions to the society of each other, thereby to promote greater peace and concord. The following Mandatory Letter was, accordingly, addressed to the Vice-Chancellor of the University of Cambridge, on behalf of Alban Francis, a Benedictine Monk then residing there:

1687.

"To our trusty and well-beloved the Vice-Chancellor of our University of Cambridge, to be communicated to the Senate there.

"JAMES R.

"Trusty and well-beloved we greet you well. Having received good Testimony of the Learning and

¹ *Letter from Dr Joseph Craven, to the Bishop of Lincoln, dated, Jan. 11, 1725—6. Lansdowne, MSS. No. 988, fol. 199.*

Loyalty of our trusty and well-beloved Alban Francis, we have thought fit hereby, in the most effectuell manner to recommend him to you for the Degree of Master of Arts: willing and requiring you forthwith upon the receipt hereof (all Dispensations requisite being first granted) to conferre on him, the said Albin Francis, the said Degree of Master of Arts, without obliging him to performe the Exercises requisite thereunto, or cautioning or compounding for the same, and without administering unto him any Oath or Oaths whatsoever, or tendering any subscription to be made by him: Any Statute, Constitution, or Custome to the contrary in any wise notwithstanding, wherewith we have dispensed and do accordingly hereby dispense in his behalfe. And so not doubting of your ready compliance herein, We bid you farewell. Given at our Court at Whitehall, the 7th day of February 1686-7, in the third yeare of our Reigne.

“ By his Maj^{ty}s Command,

SUNDERLAND, P.”²

. This Letter (according to a Note on the back of it) was read in full Senate on the 22 Feb. 1686-7; but the Senate, almost unanimously, advised the Vice-Chancellor not to admit Mr Francis to his degree, till the King had been petitioned to recal his Mandate. Application was, therefore, made to the Duke of Albemarle, Chancellor of the University, to beg his intercession with the King. The Duke returned for answer, that he had tried to divert the King from his purpose, but without effect; yet that possibly a Petition from the University, as a Body, might have better success. Such a Petition however could not

² Baker, MSS. Vol. xxx. p. 341.

be voted in the usual way, because Mr. Basset, King James's Master of Sidney College, and an avowed friend of Francis, was in the Caput, and as a matter of course, would throw but any Grace that might be brought forward, to authorise a Petition against one, whose cause he openly espoused. As, also, it might look tumultuary for one hundred and fifty, or two hundred Members of the Senate, to address the Vice-Chancellor in person, it was decided that the more quiet and decorous manner would be to send Deputies from each House. For this purpose, Dr. Smollett, Professor of Casuistry, was chosen by the Non-Regents, and Mr. Norris, Fellow of Trinity, by the Regents. The message, which these two were charged to bear, from their respective Houses, to the Vice-Chancellor, was, "That the Senate considered the admission of Mr. Francis without the usual Oaths, illegal and unsafe; and for that reason, that the King should be petitioned, in the doing of which they were ready to join, and make it their Act." After this, a gentleman was admitted to the Degree of Doctor in Medicine, having first taken the Oaths; and the Esquire Bedalls, and Registrary, were sent to inform Mr. Francis that the Senate were ready to admit him also, to a Degree, provided he would take the Oaths. This, however, he refused to do; insisting on the King's Dispensation: and immediately after the Congregation, he set out for

¹ The coincidences of ancient and modern history are sometimes very curious.



London, to report at Whitehall the reception given to the King's Letters.

In the afternoon of the same day, a Bedell was dispatched to London with Letters to Lord Sunderland, requesting him to mediate for the University with the King; but that Nobleman did not send any answer: and in a few days a second Mandate was addressed to the Vice-Chancellor and Senate, requiring them, "at their peril," to admit Francis to his Degree. This Letter, also, was read in full Senate on the 11th of March, but with no better success; for that Body still advised the Vice-Chancellor to refuse to admit Mr Francis to his Degree. At the same time, however, it was considered necessary to take measures for averting the Royal displeasure; and Letters for that purpose were entrusted to Mr Braddock, Fellow of Catharine Hall, and Mr Stanhope, of King's College, for the Duke of Albemarle and Lord Sunderland. Those Gentlemen were also instructed to make application to several persons of Quality and Station, that all uniting for one object, there might be the greater chance of pacifying the King. The Earl of Sunderland, on receiving the Letter addressed to him by the University, promised to acquaint His Majesty with the purport of it, and tell them the King's pleasure. That pleasure proved to be a Summons for the Vice-Chancellor in person, and the Senate, by themselves or Deputies, to appear before His Majesty's Ecclesiastical Commissioners, to answer such matters as should be there objected against them. On the 11th of April, therefore,

the following persons were formally deputed by the Senate to represent and act for the University:

Dr John Peachell, Vice-Chancellor, Master of Magdalene College.

Dr John Eachard, Master of Catharine Hall.

Dr Humphrey Babington, Fellow of Trinity College.

Dr Thomas Smith, Fellow of St John's College, and Professor of Casuistry.

Dr William Cook, Fellow of Jesus College.

Mr Isaac Newton, Fellow of Trinity College, and Mathematical Professor.

Mr John Smith, Fellow of Queens' College.

Mr George Stanhope, Fellow of King's College.

When these parties appeared before the Ecclesiastical Commissioners, they were called upon to give their reasons for refusing to confer the Degree of Master of Arts on Alban Francis, in accordance with the King's Mandate. They pleaded those several Acts of Parliament (1 Eliz. c. 1.: 5 Eliz. c. 1.: 3 Jam. I. c. 4.: 7 Jam. I. c. 6.) which required certain Oaths of Allegiance and Supremacy to be taken by all persons before their admission to any Degree in the Universities; and that, Alban Francis having refused to take those Oaths, to have admitted him to a Degree would have been "a breach of the Trust in the Vice-Chancellor and Senate reposed, and a violation of their Oaths." It was further suggested, that it was not clear that the matter in question came within the "Cognizance" of the Commissioners for Ecclesiastical affairs, since the taking a Degree in the University, or the admitting to, or refusing such

a Degree, "was not ecclesiastical or spiritual, but of Lay and Temporal Cognizance:" And, finally, it was submitted, that it was a matter of doubt whether the Ecclesiastical Commission itself had any legal existence, since by 16 Charles I. c. 10. the Sovereign was prohibited from issuing such a Commission.

These reasons, as might have been anticipated, did not satisfy the Commissioners, who demanded to be informed, whether there had not been persons admitted to the Degree of Master of Arts, without taking the Oaths? In answer, it was allowed, that Dr Lightfoot had been so admitted; but then he had subscribed "to the Three Articles the first whereof is the King's Supremacy; and that he could not refuse the Oath upon a principle, because the same must have hindred his subscription¹." And on the other hand, when the late King Charles II. had given a Mandate to one Tatnell, a non-conformist Minister; and he refused to subscribe and take the Oaths, the University represented the matter to the King, who, on their petition, recalled the Mandate. It was, moreover, stated, that several other Royal Mandates had been refused by the University. But all would not satisfy the Commissioners; for, "as a mark of His Majesty's and their Lordships' displeasure," they proceeded to deprive Dr Peachell of the office of Vice-Chancellor; and declared him, also, to be "suspended *ab officio et beneficio* of his Master-

¹ Both in the State Trials and in the Stuart Papers, Dr L. is said to have subscribed "to the Thirty-nine Articles, the first whereof &c.;" but this is clearly a mistake.

ship, during His Majesty's pleasure." A copy of this sentence was accordingly fixed on the School-doors, and on the Gates of Magdalene College. The University yielded; and elected a New Vice-Chancellor in May.

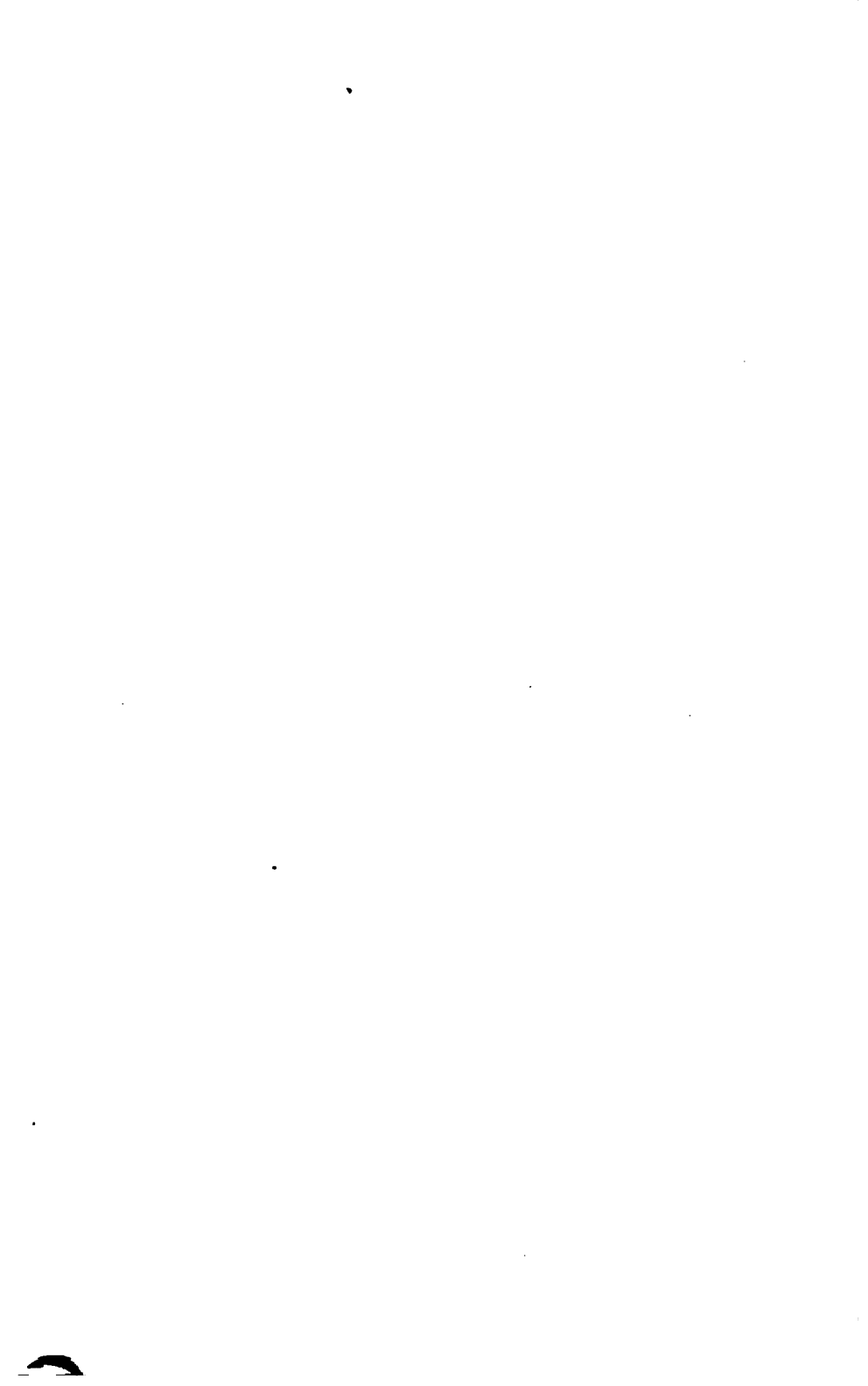
Before proceeding to mention another instance of Royal interference in Cambridge, it may not be amiss to lay before the reader, a Letter written by the Bishop of Ely to Dr Gower, then Master of St John's College; from which we learn the intense interest excited by King James's attempt to force Sectarians into the Universities, and the great importance that was attached to the results that might follow.

ELI HOUSE, Feb. 23, 1688.

Most Dear Sir,

If I could envy you any honor, it should be this; you have had a most glorious part in this great transaction. The scene opens to all Eyes, and the Mouths of all good men are full of the praises due to the whole University for making the first stand, and that in a brave Body. I trust your example will do wonders, and work like effects at Oxford, where they are to be tried (I hear) immediately. I do almost promise myself, your courage and constancy will reassure the old Man of Sidney. For myself, I expect to stand or fall with you, for if you are fallen upon, I shall be commanded to suspend some of you that have Cures and so be suspended myself. . . . The good Archbishop is mightily revived by this account. And for me, that love and honor I had for you, and which I thought could hardly be augmented, I find ~~re~~ doubled. God Almighty fit and prepare us for whatever

State Trials, Vol. iv. p. 253, &c. *Clarke, Life of James II.*, Vol. ii. p. 125, &c. *Baker, MSS.* Vol. vi. p. 358.



he pleases to send, and put into our hearts that perfect love casting out fear.

"Dearest Sir,

"Your's Most Affectionately,

"FRANK ELY."

1687.

It becomes our business now to shew how much need, the "old Man of Sidney," whoever he may have been, had to be "reassured;" for on the 2nd of July, 1687, a Royal Letter was received by the Master and Fellows of Sidney Sussex College, informing them, that the "Commissioners for Ecclesiastical Causes and for the Visitation of the Universities," had thought it requisite to abrogate and abolish several Clauses in the Statutes of that College; and that the King had thought proper to approve, and confirm, what the Commissioners had done. The Society was also required to register the alterations, and for the time to come to obey them, "any Order, Constitution, Statute, Usage of the College, to the contrary notwithstanding." From the letter of Dr Craven, quoted above, we learn that it was Basset, who "procured from the Commissioners the Statutes of Sidney College to be altered, and whatever was in behalf of the Protestant Religion to be taken away." And the alterations in the Statutes were certainly all against the "Protestant Religion:" for, whilst the Statutes of the Foundress required the Master of the College to be a person who held all Popery in detestation, and maintained the paramount

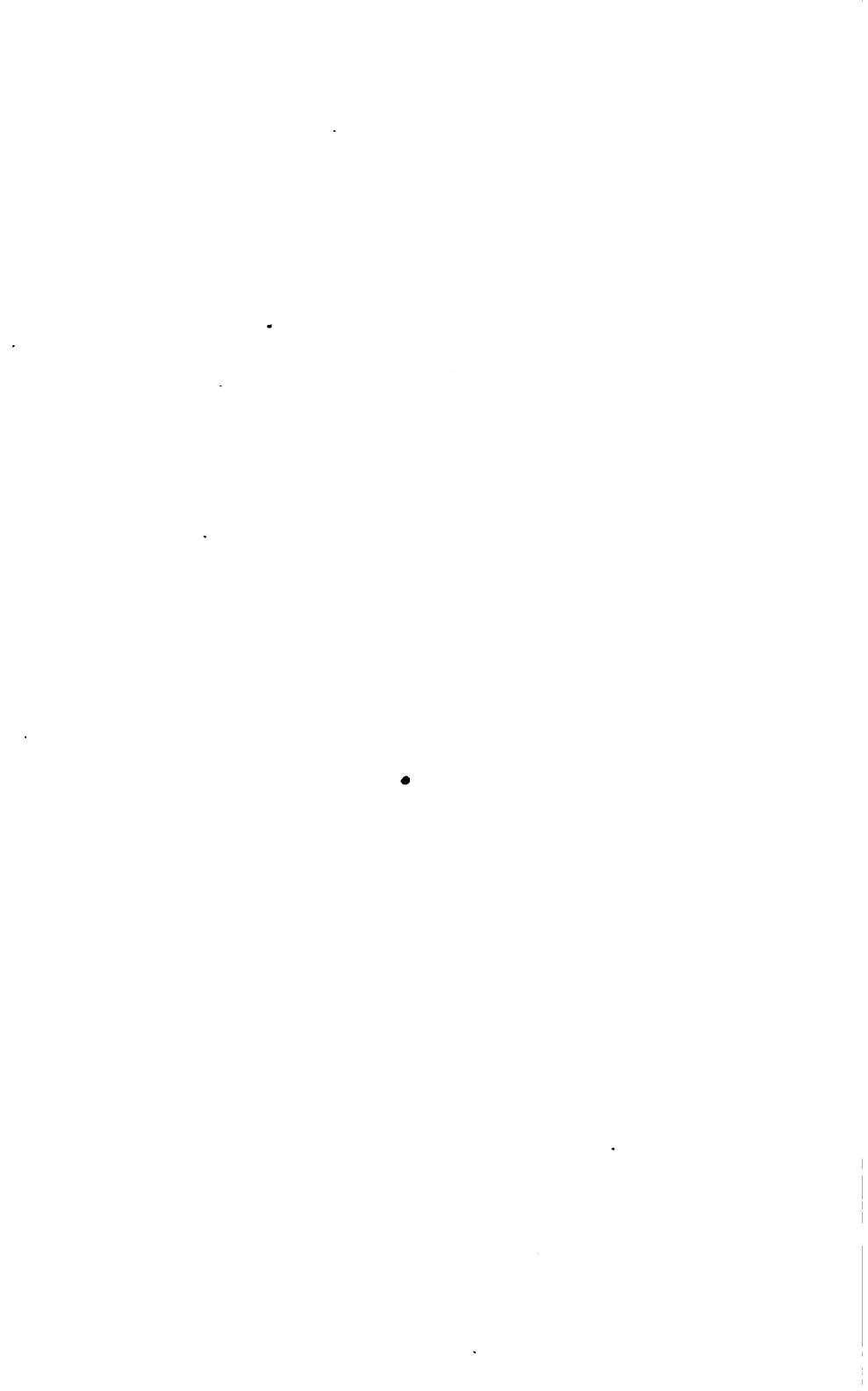
authority of the Word of God in matters of faith, and eschewed all subjection to foreign Bishops, Princes and Potentates; and one, also, who would neither seek for, nor accept of any Dispensation contrary to the Statutes, the Commissioners decided that such qualifications in a Master were inconvenient. They came to a similar conclusion, also, with regard to the qualifications of a Fellow¹. And thus they effectually provided, that this truly Protestant Foundation might, in the course of time, pass into the hands of Papists. "The College made what application they could at Court by Petition and Interest of friends, but found nothing would prevail²," to deliver them from the Commissioners.

Our attention has now to be directed to that threatened trial of the Sister University, which the Bishop of Ely informed Dr Gower might soon be expected to happen. The Presidentship of Magdalene College, Oxford, had become vacant, and the day for electing a President fixed for Wednesday the 13th of April, 1687: but before the day of Election, it became known, that the King intended to nominate Mr Farmer to the Presidentship. On this, the Bishop of Winchester, the Visitor of the College, addressed a Letter to the Earl of Sunderland, begging him to represent to the King, that Mr Farmer was not statutably eligible to the Presidentship of Magdalene; and that the Bishop, therefore, hoped his Majesty would leave the Fellows, to fill up the office according

¹ *Stat. of Sidney Sussex College.*

² *Dr Craven's Letter.*





to Statute. The Vice-President, and Fellows of the College, also, petitioned the King, representing the absence of due qualifications in Farmer; and requesting, therefore, either to be left to a free election; or, that the King would recommend a suitable person to be chosen President. This petition was dated April 10, 1687: and the following Mandatory Letter was delivered to the Vice-President and Fellows of the College, on Monday April 11th.

“ To our trusty and well-beloved the Vice-President and Fellows of St Mary Magdalen College of our University of Oxford.

“ JAMES R.

“ Trusty and well-beloved, We greet you well, Whereas We are well satisfied of the Piety, Loyalty, and Learning of our trusty and well-beloved Anthony Farmer, Master of Arts of that our College of St Mary Magdalen. We have thought fit hereby effectually to recommend him to you for the place of President of our said College, now void by the death of Dr Clark late President thereof; willing, and requiring you forthwith, upon receipt hereof, to Elect, and Admit him the said Anthony Farmer into the said place of President, with all and singular the Rights, Privileges, Emoluments and Advantages thereunto belonging; any Statute, Custom, or Constitution to the contrary in any wise notwithstanding, wherewith we are graciously pleased to dispense in his behalf; And so not doubting of your ready compliance herein, We bid you farewell. Given at our Court at Whitehall, the 5th day of April, 1687. In the third year of our reign.

“ By his Majesties Command.

“ SUNDERLAND P.”

This letter was read to the Fellows, on the evening of the day on which it was received; but nothing was decided upon immediately; for it was considered desirable to wait for an answer from the King to their Petition. Having met on a subsequent day, and being then informed from the Lord Sunderland, that the only answer the King had to return to their Petition, was, that His Majesty expected his Mandate to be obeyed, the Vice-President and Fellows proceeded to elect a President according to the Statutes of their College; and chose Mr Hough into that office. They, moreover, presented their newly elected President to their Visitor, the Bishop of Winchester, who at once admitted Mr Hough into the Presidentship. In the meanwhile, intelligence reached Court, that the King's Mandate had been disregarded; and Lord Sunderland was commanded to write to the Bishop of Winchester to require him not to admit Mr Hough to be President, until the King gave further order: but the command arrived a day too late. Lord Sunderland, also, addressed a Letter to the Vice-President and Fellows of Magdalene College, stating that the King was much surprised at their proceedings, and desired to be informed "whether they did not receive His Majesty's Letters Mandatory before they chose Mr Hough." In answer, the Vice-President and Fellows gave in a statement of their proceedings, and their reasons for disobeying the King's Mandate; which were, that the qualifications of Mr Farmer were, in all respects, so different from those required in their President,



that to have elected him would have been an indirect violation of the express words of their Statutes, to which they were strictly and positively sworn. They added, that it might be objected to them, that the King in his Letter for Mr. Farmer, did graciously dispense with those Statutes; and that, therefore, they might have obeyed the Mandate without any breach of their Oath: but they begged leave to represent that there was an express clause in that Oath, wherein every Fellow, at his admission, swears neither to procure, accept, or make use of any Dispensation from his Oath, or any part thereof, by whomsoever procured, or by what authority soever granted. And that, therefore, whenever in past time they have elected in obedience to the King's Mandate, it has always been in cases where the Person recommended has been every way qualified for the office by their Statutes. The Vice-President and Fellows sent, also, with this Report of their proceedings, a Petition to the King, assuring him of their loyalty and obedience; and protesting, that "a stubborn and groundless resistance of the Royal Will and Pleasure in the present, and all other cases, was that which their souls eternally abhorred." But all would not do; they were, on the 28th. of May, 1687, summoned to appear before "his Majesty's Commissioners for Causes Ecclesiastical, &c." at Whitehall; there to answer to such matters as should be objected against them. In due course of time, the Vice-President and some of the Fellows appeared at Whitehall, and re-stated the reasons which had induced them to

disobey the King's Mandate; producing, moreover, some moral, as well as Statutable objections against Farmer, which the latter vainly attempted to refute. Nevertheless the Ecclesiastical Commissioners declared the election of Mr Hough to the Presidentship to be void. Yet the Court was so ashamed of Farmer, that instead of issuing a second Mandate in his favour, as was once done in Cambridge, in the case of Alban Francis, the King addressed the following Letter to the Senior Fellow of Magdalene College.

“To our trusty and well-beloved the Senior Fellow of St Mary Magdalen College in our University of Oxford, or in his absence to the Senior Fellow residing there, and to the rest of the Fellows of the said College.

“JAMES R.

“Trusty and beloved, We greet you well : Whereas the place of President of that our College of St Mary Magdalen, is now void, Our will and pleasure is, and We do hereby authorize and require you forthwith, upon receipt hereof, to admit the Right Reverend Father in God, Samuel Lord Bishop of Oxon, in the said place of President, to hold and enjoy the same, with all the Rights, Privileges, Profits, Emoluments, and Advantages thereunto belonging, any Statute or Statutes, Custom, or Constitution to the contrary in any wise notwithstanding, wherewith we are graciously pleased and do accordingly hereby dispense herein; We bid you farewell. Given at our Court at Windsor the 14th day of August, 1687. In the third year of our Reign.

“By his Majesties Command.

“SUNDERLAND P.”



This Bishop of Oxford was Dr Parker, of temporising and inglorious memory; yet his Election sped no better than that of Farmer; for the Fellows of Magdalene maintained, that as the office of President was already filled up by Mr Hough, they did not consider themselves authorised to proceed to a second Election. This answer so incensed the King, that he went to Oxford himself; and there, calling the refractory Fellows before him; threatened them in a most royal manner; but could get no other answer from them than that with all willingness to obey His Majesty, they yet could not act contrary to the Statutes of their College, and thus violate their Oaths. This firmness, on the part of the Fellows, puzzled and chagrined the King and his Advisers. This the King's Apologist is unable to conceal. He observes, that while the King was at Oxford, "there was nothing done by the Fellows which tended to a submission to the King's authority, but rather to a justifying of their undutifulness in their personal address to him; which was so contrary to expectation, at a time when the King honoured their University with his presence; and was the only disobligation he had met with in his whole Royal progress¹." It was therefore attempted, at this point of the proceedings, to overcome the inflexibility of the Fellows of Magdalene, by trying to excite in their minds self-interested apprehensions. With this view, a letter was addressed to Dr Bayley, one of the Fellows, by the famous William Penn, the Quaker, (as was given out) but, in all probability,

¹ Johnston, *The King's Visitation Power asserted*, &c. p. 51.

by some crafty Jesuit. It purported to be written out of "a passionate concern for their interest, to persuade them either to a compliance with His Majesty's letter, or to think among themselves of some expedient to prevent the ruin of their College, and themselves." Then, in the true spirit of a modern concessionist, suggesting that "where there are so many Statutes to be observed, it is impossible but some must be broken, at one time or other, and that a failure in one point would lay them open to a loss of their Grants, and to the Royal displeasure:—that their overthrow would be a fair beginning of the so much aimed at Reformation, first of the University, then of the Church." The answer returned to these mean-spirited insinuations, was, worthy of the occasion, viz, "that the Fellows were not conscious of having given the King any just offence; that, therefore, they had no reason, to fear any threatened legal process: that the misdemeanors of particular persons would not destroy a College:—but that if their College should be the first to be overthrown, they should be better justified by the observance of their Statutes (at least to God and their own conscience), than they could have been by a voluntary and deliberate breach of them." Some "Queries" were, also, sent, about the same time, from Windsor, to the Fellows of Magdalene, with a view to ascertain whether, waiving their Election of the Bishop of Oxford, they could not, without violence to their conscience, signify their willingness to admit him President of their College? Whether it would not be more for the interest of the Protestant Religion, to have



a suspected Popish President, than to have all the places in the College refilled by the King's Authority, with Popish Novices and Priests? Whether they were not under a mistake in thinking, that by continuing to resist the King, they should render themselves more acceptable to the Protestant Nobility: or rather, would not those Nobility be afraid of receiving ejected Fellows into their houses, for fear of giving offence to the Court? Whether they were not ignorantly incited by some hot-headed advisers? But to these wily suggestions the Fellows of Magdalene nobly made answer, that "they must not make themselves guilty of deliberate perjury for any considerations whatever, nor do evil that good may come of it:—That they conceived they should be more acceptable to all good men, for acting honestly according to their conscience, than for voluntarily and unjustly departing from their right." Baffled thus in every attempt to alarm or cajole the President and Fellows into submission to the King's Mandate, his Majesty issued a Commission to visit Magdalene College. The Commissioners cited the "pretended President" and the Fellows to appear before them, and demanded that Dr Hough should deliver up the Keys, and quit possession of the Lodgings, to the person whom his Majesty had appointed President. But the Doctor, refusing to do this, was denounced as contumacious; his name struck off the College Boards; and the Fellows, and others of the Society, admonished that they should no longer submit to his authority. The Bishop of Chester, one of the Commissioners, then asked

the Fellows, whether they would admit the Bishop of Oxford into the office of President? And on their refusal, that Prelate was installed; none of the Fellows being present except Mr Charnock, who had throughout been in the Court interest¹. Finally, the Fellows were required to sign a Form of Submission, in which they were to acknowledge their great disobedience to the King's commands; to beg his forgiveness; and, as a token of their sincerity, to acknowledge the authority of His Majesty's Visitors, and the justice of the proceedings under the Commission; as, also, to declare their entire submission to the Bishop of Oxford as their President. To this Submission all the accused Fellows objected, and they were in consequence expelled the College. Their persecutions did not, however, end with their expulsion from College; for on the 10th of December, 1687, the

“Commissioners for Causes Ecclesiastical, and for visiting all Cathedral and Collegiate Churches and Colleges, &c. taking into consideration all that had passed in the business of St Mary Magdalen College in Oxford, and the contemptuous, and disobedient behaviour of Dr John Hough and several of the Fellows of that College, throughout the whole proceeding;”

pronounced all the parties (viz. Dr Hough and twenty-five others) to be incapable of receiving, or being admitted to, any ecclesiastical preferment; and such as were not yet in Holy Orders, to be adjudged “incapable of receiving, or being admitted into the same.” After the expulsion of the Fellows, the greater part of the *Demies* were also

¹ This person was afterwards executed for being concerned in a plot to assassinate William III. Rapin, *Hist. of Eng.*





ejected, to make room for the Papists and temporisers, who were appointed to succeed them. Not long after this the Bishop of Oxford died; and the King appointed the Romanist Bishop Gifford, to be President of Magdalene College, and filled up most of the Fellowships with Romanists².

It remains only that we notice the principle by which these violent proceedings on the part of James the Second, were justified: it was by the Royal Prerogative and Dispensing power. For though the King pleaded the 13th Chas. II. c. 12. as giving him the right to appoint Ecclesiastical Commissioners, to visit the Universities; yet the Commissioners, in the cases we have had to review, claimed the power to "emend, change, correct, or promulgate local Statutes and Ordinances only," in order that Statutes, &c. so emended, &c. might be "confirmed, ratified, and put forth" by the direct authority of the Crown. These Commissioners, therefore, appear not as the originators of the persecutions carried on against both Universities, but simply, as the Instruments which the King employed, to punish offenders against his assumed Prerogative. Accordingly we find them addressing the Delegates who were sent from Cambridge respecting the affair of Albin Francis—

"Gentlemen, you cannot but be sensible how pernicious and obstinate the University has shewn themselves in re-

² *State Trials*, Vol. iv. p. 262, et seq. Ayliffe, *State of Oxford*, Vol. i. pp. 352, et seq. Johnston, *The King's Visitatorial Power asserted*, pp. 1, et seq. *Impartial Relation of the whole Proceedings against St Mary Magdalen College, in Oxon. 1688.*

fusing the King's Commands, and such commands that ought to be obeyed. There was a time, you may remember an instance, if you do not I'll turn you to one in the year 1667, when the [King's] Letters were so far from being disputed, that they passed for a Law among you, and do this day stand recorded among the Solemn Acts and public Statutes of the University¹."

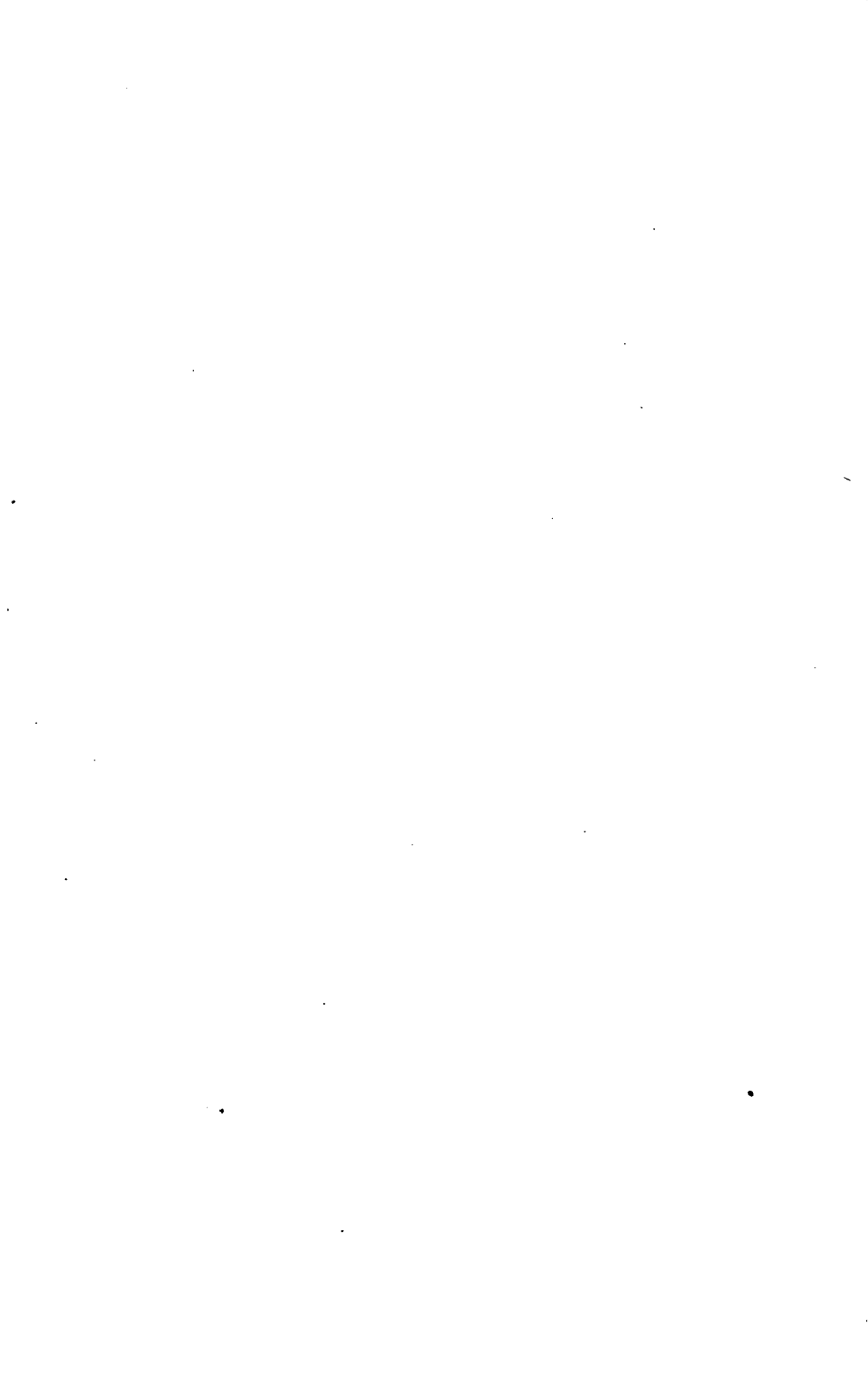
So, in the copy of the Sentence pronounced upon Dr Peachell, it is recited that he was convened before the Commissioners "for disobedience to His Majesty's Royal Letters Mandatory, and other his contempts." In like manner, as regarded Oxford, we find the advocates of James still vindicating his proceedings, as a matter of unsophisticated prerogative:—

"His Majesty sends down a Dispensation with his Mandatory Letter; notwithstanding which the Fellows [of Magdalene College, Oxford], pretending that they were bound in conscience to observe the Statute because of their Oath, regard not the Mandatory Letter, nor Royal Dispensation: they make not a choice as the King commanded; and when cited before his Majesty's Commissioners and Visitors to answer for their disobedience, they, in a most contemptuous manner, protest against the proceedings. The great points, therefore, to be discussed may be reduced to these two heads, (1) Whether the King by his Prerogative may not dispense with College Statutes? (2) Whether, when there is a Dispensation granted, the Fellows are by their Oath obliged to act according to those very Statutes that are dispensed with?"

The first of these questions was, as may be anticipated, decided in the affirmative; and the second

¹ *State Trials*, Vol. iv. p. 261.

² *A Vindication of the Proceedings of His Majesty's Eccles. Commissioners*, p. 37.





in the negative. Whilst our object, however, does not lead us to discuss the speculations of a jesuitical casuistry, it is of importance to look into the grounds on which the Dispensing Power here claimed was made to rest; because it is conjectured that those who would assert the same, or a similar power for the Crown in the present day, will have to resort to the "Vindication of the Proceedings of" King James's "Ecclesiastical Commissioners" for their strongest arguments. It is there maintained, that

"The grant of Dispensations is a peculiar, and very considerable part of Ecclesiastical Jurisdiction, which is eminently seated in the Crown. That the same power the Pope claimed in the land, as Supreme Head, doth of right belong to our Kings hath been abundantly proved; and in the Statute of 25 Hen. VIII. c. 22, it is affirmed, *That the Pope claimed full Power to dispense with all humane Laws of all Realms in all Causes, which be called Spiritual.* And my Lord Chief Justice Hobart, delivering his opinion about the power of dispensing in general, holds it clear *That though the Statute of 25 Hen. VIII. c. 21, says, That all Dispensations, &c. shall be granted in manner and form following, and not otherwise, that yet the King is not thereby restrained, but his power remains full and perfect as before, and he shall still grant them as King; for all acts of Justice and Grace flow from him, as 4 Eliz. Dier. 211.* The Commission of Tryal of Piracy upon the Statute of 28 Hen. VIII. c. 13, is good, though the Chancellor do not nominate the Commissioners, as that Statute appoints, and yet it is a new Law. And Mich. 5 and 6 Eliz. Dier. 226, The Queen made Sheriffs without the Judges, notwithstanding the 9 Edw. II. And Mich. 13 and 14 Eliz. Dier. 308, the office of Aimagr granted by the Queen without the Bill of the Treasurer, it is good with a non obstante, against the Statute of

31 Hen. VI. c. 5. *For these Statutes and the like, were made to put things in ordinary form, and to ease the Sovereign of labour, but not to deprive him of power.*

“ Besides, the learned of the Law do with much plainness clear up thus much unto us, That the King can grant out whatever dispensations the Pope did, so long as the things dispensed with are not *mala in se*. In Ecclesiasticals the King can dispense not only with Canons, but with Acts of Parliament, yea with any thing that is but *malum prohibitum*: And seeing the Universities are for the maintenance of Religion, and fall under the care of the Supreme Head, as other Spiritual and Ecclesiastical Corporations do, the King can in like manner dispense with their Statutes. If with the greater, no doubt with the lesser. If an Act of Parliament may be dispensed with, it's not to be questioned that a provincial Canon may be so too; and if Acts of Parliament and Provincial Canons cannot limit or confine or stand before the Dispensing Power, How is it possible that a College Statute should do it? To suppose that it can, is to ascribe greater power to one man, or a little Corporation than to the greatest body of the nation; than which nothing can be more absurd. Besides, the Laws enacted by the Founder of a College, can have no more strength than they receive from the King. Nor can a College be erected without his leave¹. ”

And again,

“ The whole of these Proceedings depend on the Dispensing Power: If his Majesty had not dispensed with their College Statutes, the case would have been another thing². ”

We find James the Second himself making use of similar arguments and judicial decisions in support of the Dispensing Power. He quotes, to the

¹ *Vindication of the Proceedings of His Majesty's Eccles. Commissioners*, pp. 44, et seq.

² *Ibid.* p. 68.





same effect also, the speech of Mr Glanvil, in the reign of Charles the First, as expressing the sentiments of the then House of Commons:—

“There is a trust inseparably reposed in the person of the Kings of England; but that trust is regulated by law: for example—when Statutes are made to prohibit things not *mala in se*, but only *mala quia prohibita*, under certain forfeitures and penalties to accrue to the King, and to the informers that shall sue for a breach of them, the Commons must, and ever will, acknowledge the Regal and Sovereign Prerogative in the King touching such Statutes,—that it is in his Majesty’s absolute and undoubted power, to grant dispensations to particular persons with the clause of *non obstante*, to do as they might have done before those Statutes wherein his Majesty conferring grace and favour on some, doth not do wrong to others³.”

One can understand, therefore, that James might feel well warranted to observe with regard to the case of Magdalene College, Oxford, that

“It was ridiculous to dispute the King’s power in dispensing with the local Statutes of a College, which had been so frequently practised in former reigns, after it had been decided in His Majesty’s favour that he might dispense with certain standing Laws of the land⁴.”

So, also, with regard to the Ecclesiastical Commission which that Monarch issued, he considered himself to be fully warranted, by the doctrine of the Prerogative Lawyers, who held that so much only of the 1 Eliz. c. 1. was repealed by the 16th Chas. I., as authorised the Crown to appoint Commissioners who could fine, imprison, or tender

³ Rushworth, *Coll.* Part i. p. 572.

⁴ Clarke, *Life of James II.* Vol. ii. p. 123.

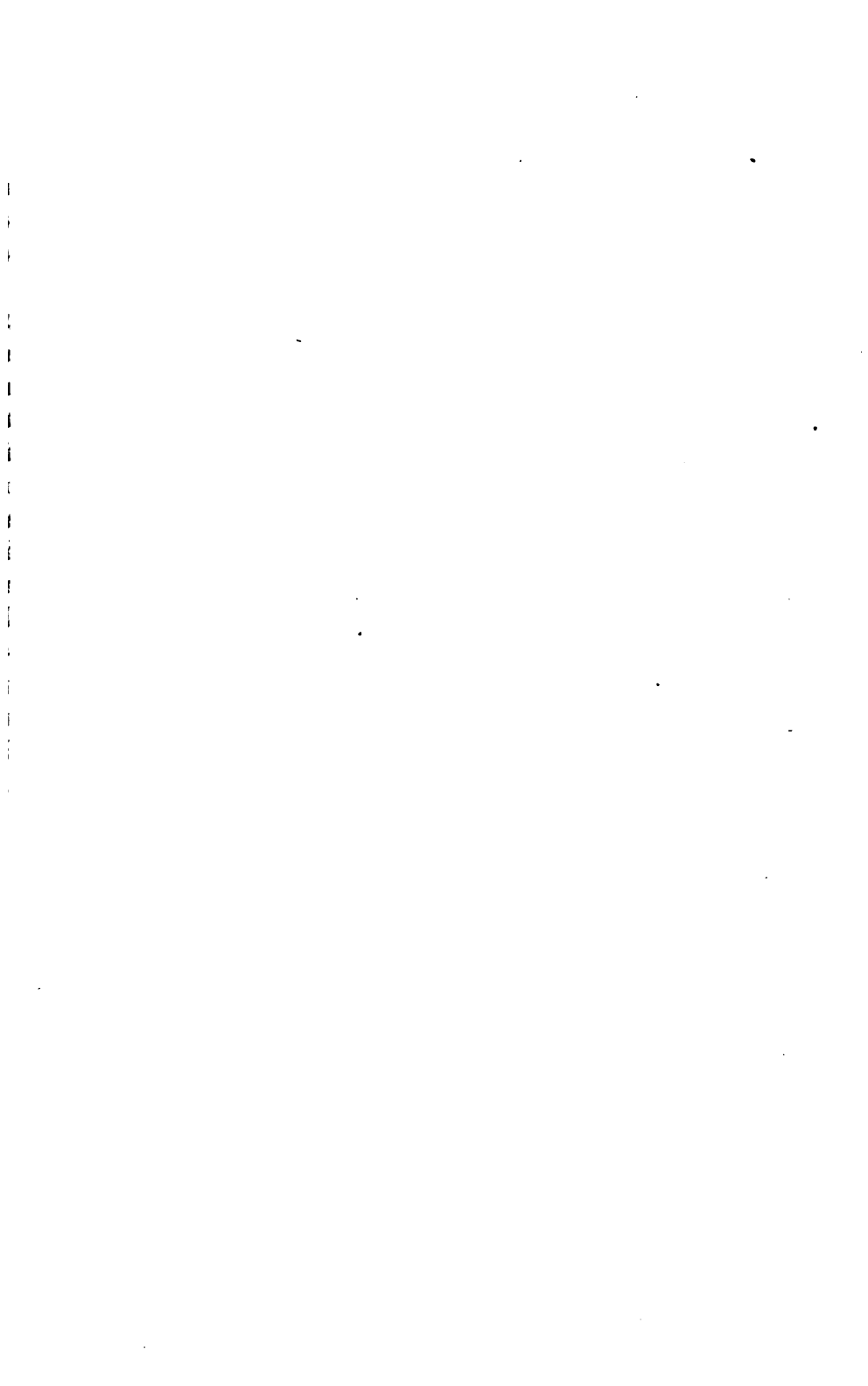
the oath *ex officio*; and that consequently the 13th Chas. II. c. 12, gave the King full power to commission whom he pleased, for the purpose of inflicting merely Ecclesiastical Censures.

But, the unhappy Prince found to his cost, that, though he had obtained from eleven of the Judges, and his confidential advisers, an opinion that the "Dispensing Power was an inherent right of the Crown," and that he was authorised to visit with Ecclesiastical Censures those who refused to yield obedience to his mandates, at the expense of their consciences; the nation was not prepared to concede, that the Judges and others should offer up all Law, and Right, and Liberties, to the will of the King; nor, that Members of the Universities should be ejected from their Freeholds by Royal Commissioners, contrary to the express provision of Magna Charta,—*That no Man shall lose Life or Goods but by the Law of the Land*.* When, therefore, it was certainly ascertained, that the Prince of Orange had actually set sail for

1688. England, responsive to a "Memorial from the English Protestants," the King desired the Bishop of Winchester, the Visitor of Magdalene College, Oxford, to settle that Society conformably to Statute. This the Bishop proceeded to do, by restoring Dr Hough and his fellow-sufferers to their respective offices,—a work of justice, which was ef-

* *Indication of the Proceedings, &c.* p. 5, &c. *State Tracts*, Vol. II. p. 331. *Stillingfleet, Eccles. Cases*, Part II. p. 70.

* *Cobbett's Parliamentary History*, Vol. v. p. 4. *Journal of the House of Commons*, An. 1688. *State Tracts*, Vol. II. pp. 420, 421.





fectcd on the 24th of Nov. 1688. In the December, also, of the same year, the King directed a Letter to Sidney Sussex College, Cambridge, to "rescind, revoke, and annul," as well the "Decree of the Commissioners" as the Royal "Confirmation thereof,"—"willing and requiring that the Statutes of that College should be observed and pursued in all things, and to all intents and purposes, as if the said alterations had not been made."

Thus terminated the designs of James the Second against the two Universities; and it is not too much to say, that the following out of those designs cost him his throne. Yet we find as ample a power to dispense with Statutes as ever James pretended to, claimed in the following Letter, addressed by his Successor in the Throne:—

1689.

"To our trusty and well-beloved the Vice-Chancellor of our University of Cambridge, to be communicated to the Senate there.

"WILLIAM R.

1691

"Trusty and well-beloved we greet you well. Whereas several persons in that our University, who should have received Degrees since Christmas last, have been delayed, by reason the abrogated Oaths could not be taken, and thereby lost their year,—we doe hereby authorise you to restore all those that have been so delayed to their years, and wholly indemnify them from any disadvantage or incapacity they may have incurred by reason of such delay, for and in respect of the respective Degrees to which they were intituled, or of any their pretensions.

^a *State Trials*, ubi *supr*.

^b *Statutes of Sidney Sussex College*. Dr Craven, *Letter to the Bishop of Lincoln*.

within our said University; provided always, that they now proceed, and take the new Oaths lately appointed in Parliament, and do all other things pertaining to those Degrees, though it be out of the due time and order prescribed by your Statutes: any Statute, Constitution, or Custome of our said University, to the contrary in anywise notwithstanding. And so we bid you farewell. Given at our Court of Whitehall the 11th day of May, 1689, in the first year of our reigne.

"By his Majesties command.

"NOTTINGHAM'."

But, in the December of the same year in which the last mentioned Dispensation was issued, the "Act for declaring the Rights and Liberties of the Subject, and settling the Succession to the Crown," (1 Will. and Mary), after reciting a Declaration of the divers ways in which King James the Second "did endeavour to subvert and extirpate the Protestant Religion and the Laws and Liberties of this Kingdom," proceeded to enact—

"1. That the pretended power of suspending of Laws, or the execution of Laws, by regal authority, without consent of Parliament, is illegal.

2. That the pretended power of dispensing with Laws, or the execution of Laws, by Regal authority, as it has been assumed or exercised of late, is illegal.

3. That the Commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and other Commissions and Courts of like nature, are illegal and pernicious."

Having now arrived at a period since which, so far as the writer of these pages is aware, no





change has been effected in the Royal Prerogative with reference to the subject of our enquiry, it may be desirable to recall to mind the different forms in which we have seen the Royal authority exercised in University affairs, and the Laws by which it was sanctioned.

1. We have observed, then, the Crown interfering with the Universities by Commission, either as regarded those Bodies at large, or particular Colleges; sometimes sending Commissioners to Cambridge and Oxford; sometimes summoning persons connected with either one or other of those places, to appear before Commissioners in London, or elsewhere. This exercise of Regal authority we have also seen to have been specifically warranted during the reigns of Hen. VIII. and Edw. VI., by Acts passed 26 & 27 Hen. VIII.: and from the accession of Queen Elizabeth until the sixteenth year of the reign of Chas. I., by the Act of Supremacy passed 1 Eliz. It has appeared, also, that from the 16th Chas. I. till the 13th Chas. II., the Act which conferred upon the Crown the power to visit by Commission, had been withdrawn; but that certain portions of the 1 Eliz. c.1. were revived by 13 Chas. II.; and that the last-mentioned Act was considered to have again authorised the Crown to appoint Visitors for the regulation of the Universities.

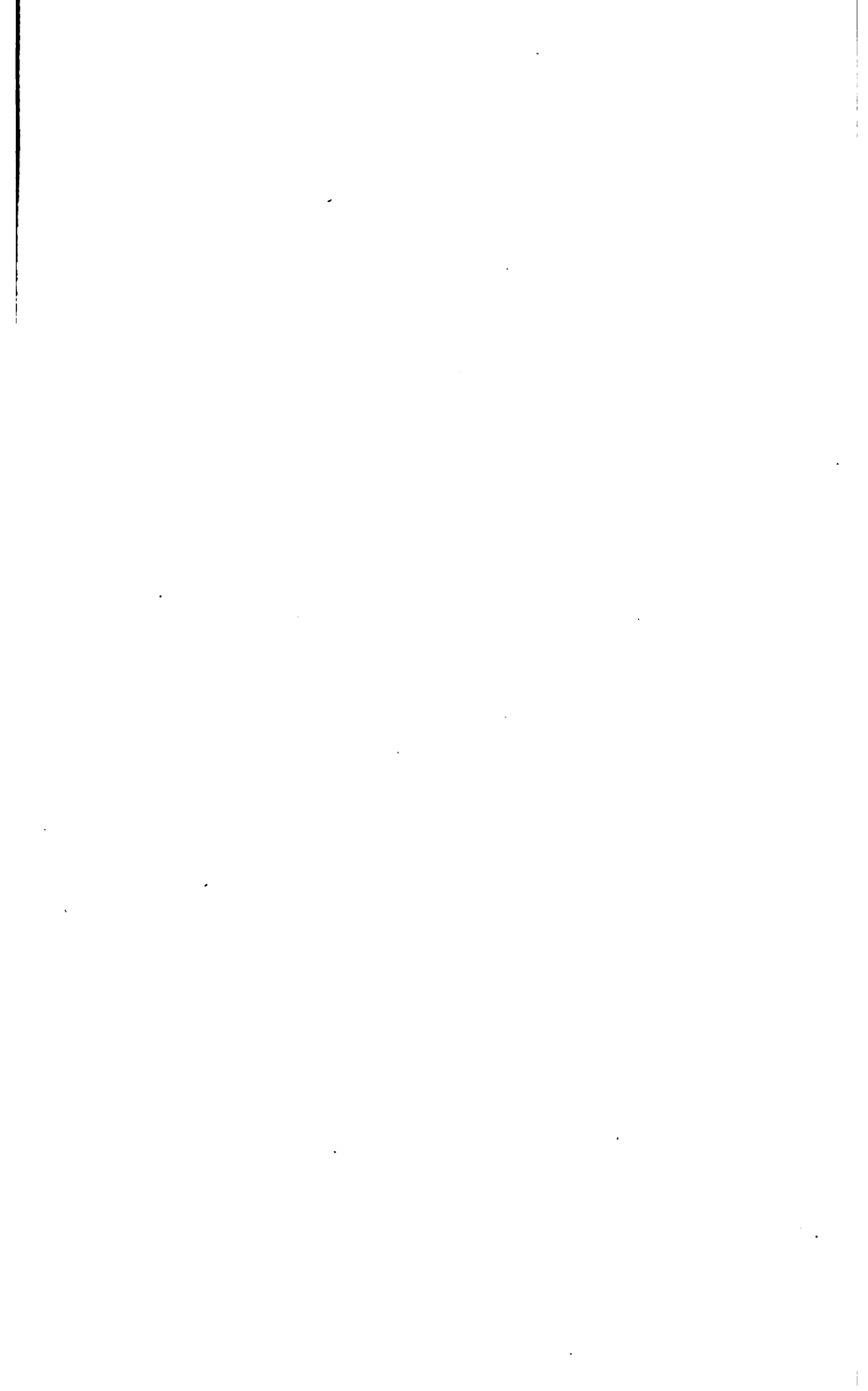
2. We have, also, met with the occasional interference of the Privy Council with University affairs; and it would not be easy to name any matter, of any kind, whether of public or private concernment, that was formerly considered

beyond the jurisdiction of that Court¹. Nor, when one reads of the many and stringent appliances which that Court had at hand, to bring obstinate spirits to a sense of obedience, one need not be surprised at the reverence in which its decisions were held. The Act of 16 Chas. I., however, reduced the Privy Council to a mere Court of Enquiry into offences against the Government; yet giving to it no authority, even in those cases, to inflict any punishment²; and expressly forbidding it to interfere with any matter affecting "the liberty and estate" of the Subject. As, therefore, it was held in the case of Magdalene College, Oxford, that James II., by annulling and suspending the Statutes of that Society, had, as a necessary consequence, affected men in their freeholds, the modification, changing, or annulling of College Statutes, may be regarded as one of those matters in which the Sovereign, in Council, cannot now legally interfere.

3. We, lastly, find the Sovereign exercising a personal authority, in the form of Injunctions, Ordinances, Directions, &c.; which were issued from time to time, for the regulation or change of the Government, and Discipline, of the Universities; of Letters Mandatory, for conferring Degrees; or, for appointing particular individuals to the Mastership, or to a Fellowship, in some College or Hall. Royal Letters, also, for the latter purpose, all assumed the Dispensing Power.

¹ See *Proceedings, &c. of the Privy Council*. Edited by Sir H. Nicolas, Vol. VII. Preface. Lambard, *Archion*, pp. 116, et seq.

² Blackstone, *Commentaries*, Book I. ch. 5. § 4.



Such personal authority for "visiting, correcting, &c. errors, abuses," &c., was conferred upon the Sovereign by the 26 Hen. VIII. c. 1.; but as that Act was repealed (1 & 2 Phil. & Mary, c. 8.), and not again revived, the power to issue Injunctions, &c. was, after the 1 Eliz. c. 1., regarded as vested in the Crown, by virtue of the Ecclesiastical Supremacy. It is material, however, to observe that some of the most important of these Injunctions, &c., which appear as the personal Acts of the Sovereign, originated in an application from the parties to whom they were addressed; were adopted also and confirmed by the Senate in Cambridge, and the Convocation in Oxford [pp. 50, 57]; and thus derived their validity as much from the legislative authority of the Universities as from the power of the Crown. Hence, when it was objected against the University of Cambridge, in the matter of Alban Francis, that a Letter of Charles the Second was received by them, and obeyed, as if it were a Statute, the reply was, that

"the King was their Visitor, and that whenever there was anything belonging to the local Statutes and Customs which they thought ought to be altered, or any abuse which should be rectified and redressed, their way was to beg the Royal Injunction in the case, which they kept upon record and obeyed as a Statute²."

But, they added, that was no reason why they should "obey a private Mandate contrary to four known Laws of the land."

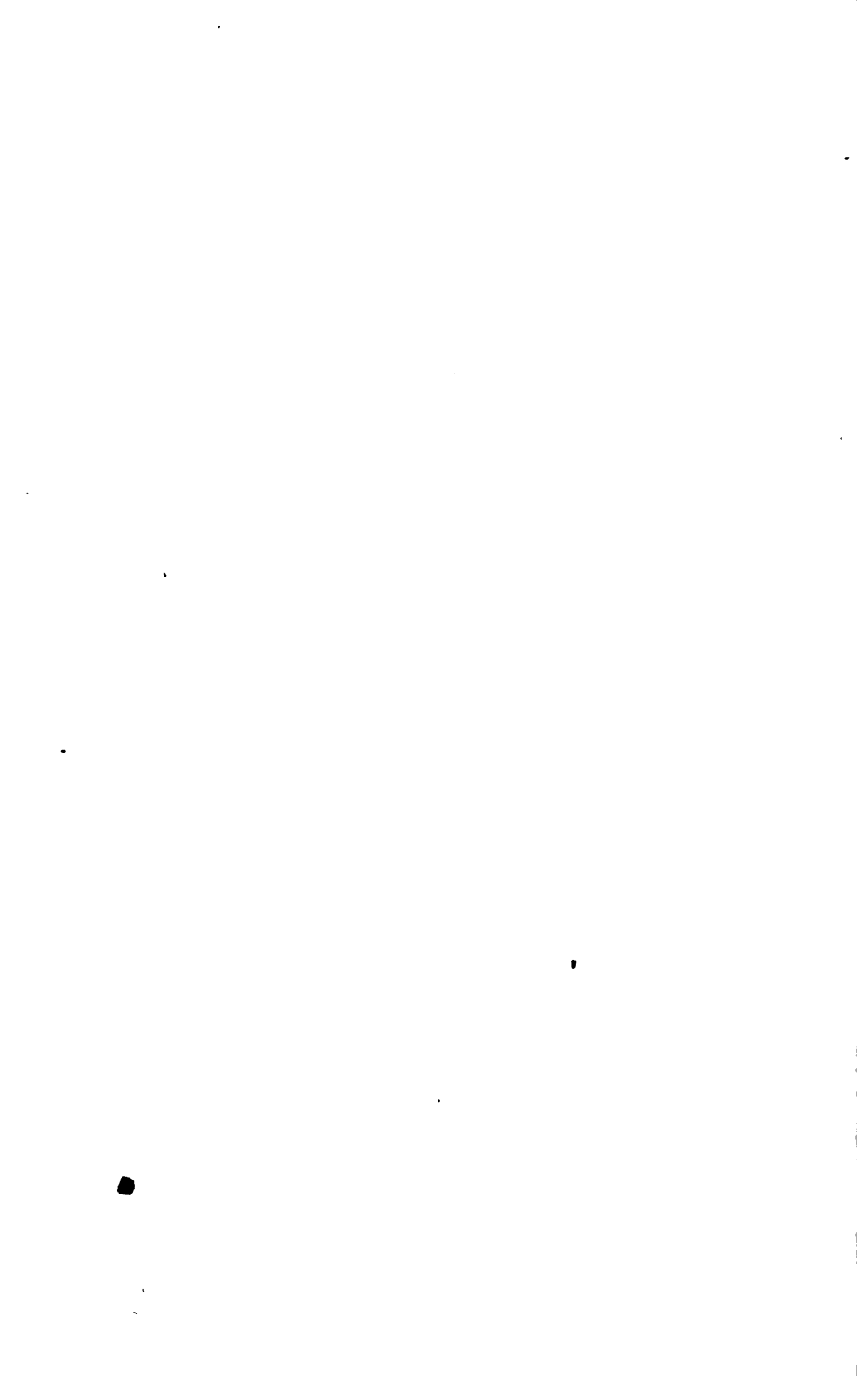
In Letters Mandatory, also, for the electing of individuals named by the Crown into Masterships,

² *State Trials*, Vol. iv. p. 261.

or Fellowships, it was, as a general rule, usual to recommend persons statutably qualified for those Offices; and then the validity of the election in each case depended on the act of the Fellows of the Colleges, to whom by Statute the election belonged; and not on the Royal Mandate. At the same time, it would have been but a mere delaying of the Royal Will, to have disputed the personal right of the Crown to dispense with Statutes; for so long as the 1 Eliz. c. 1. was in force, the Sovereign could undoubtedly have legally effected that Dispensation by the operation of a Commission. The Dispensing Power, however, in ecclesiastical matters, has been exercised chiefly on the strength of an interpretation of the 25 Hen. VIII. c. 21., by the Crown Lawyers. They maintained that the third Clause, which restrained Dispersations from being granted by the Archbishop, except in a prescribed "manner and form," did yet not restrain the Crown from granting Dispersations; for although this Statute transferred the authority formerly claimed in such matters by the Bishop of Rome to the Archbishop of Canterbury, it did not intend to take away from the Sovereign the ancient Prerogative of the Crown. Hence, that in cases in which the Archbishop had not dispensing authority conceded to him by this Act, the Crown might grant Dispersations, as the Pope had done formerly¹. This doctrine was doubtless very palatable to those who paid the

¹ Gibson, *Codex*, p. 103. Johnston, *The King's Visitatorial Power asserted*, &c., p. 262. Atkyns, *Enquiry into the Power of Dispensing*, &c. pp. 21, 22.





Lawyers; but the facts of history are, that no British Sovereign, anterior to the Reformation, ever pretended to dispense in Ecclesiastical Causes; and that the very Dispensing Power which was now maintained to be a Prerogative of the Crown, was, from the first invention of Dispensations, regarded in this country as an intolerable grievance. Thus the King, and Prelates, and Barons of England, assembled in Parliament in the year 1246, when, protesting against the encroachments of the Pope, among other things complained that

“The Kingdom groaned under the frequent exercise of the dispensing system; for that, by means of it, the sanction of Oaths, ancient Customs, the force of Charters, the authority of Grants, Statutes, Laws, and Privileges, were weakened and done away with².”

Yet this is none other than the language held in the Preamble to the Act (25 Hen. VIII. c. 21.), out of which, strangely enough, the Royal Dispensing Power was extracted. The King's Parliament again complain of the Pope's “intolerable exactions” of great sums of money “for dispensations, licences, grants, relaxations, &c.” “wherein” (they proceed)

“the Bishop of Rome hath not only to be blamed for his usurpations in the premises, but also for abusing and beguiling ‘the King's’ subjects, pretending and persuading them that he hath power to dispense with all human laws,

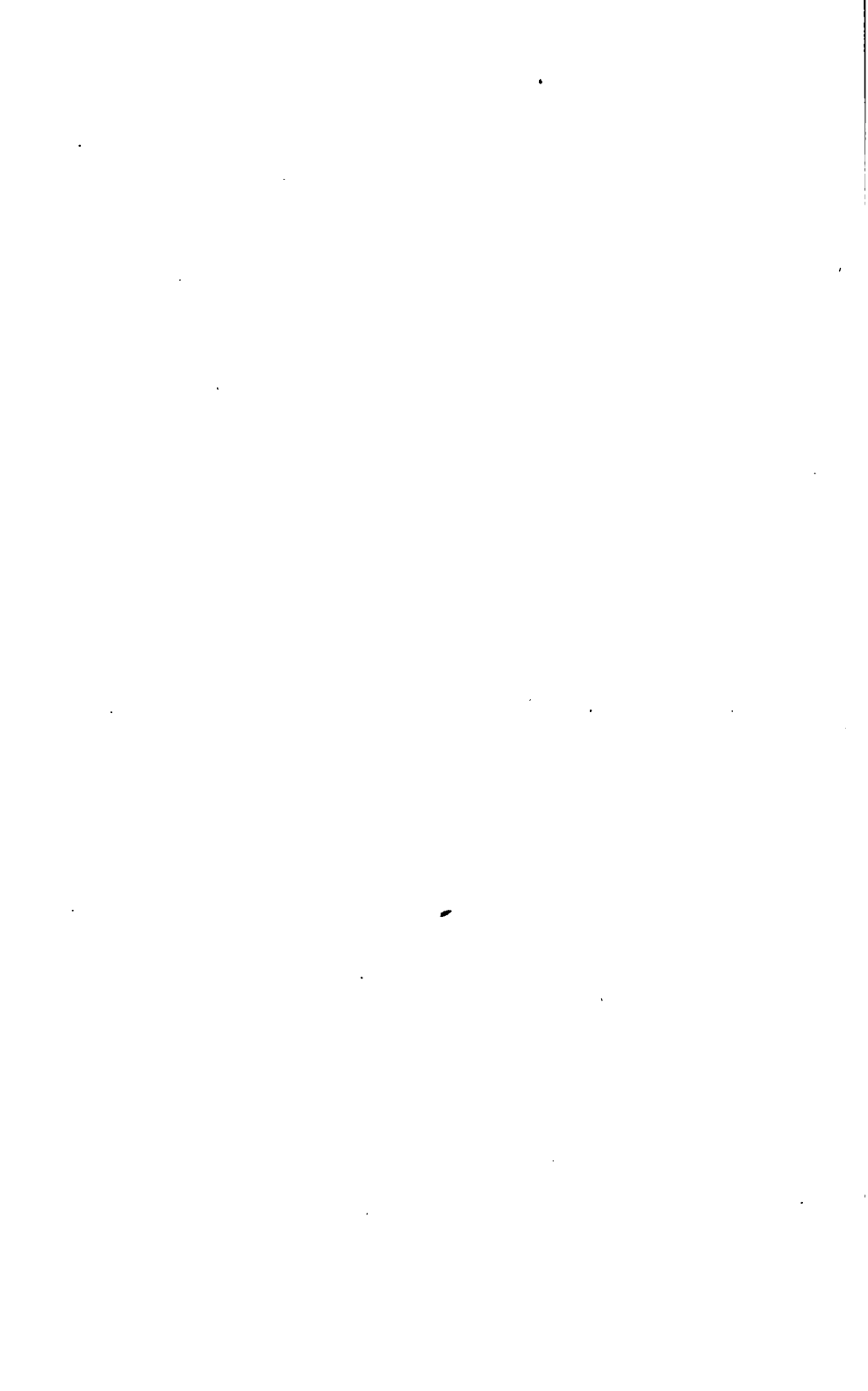
² Item, Gravatur [Regnum Angliæ] ex multiplici adventu illius infamis nuncii *non obstante*, perquem juramenti religio, consuetudines antiquæ, scripturarum vigor, concessionum auctoritas, statuta, jura, privilegia, debilitantur et evanescunt. Matt. Paris, *Hist. Angliæ*, p. 611. Londini 1684.

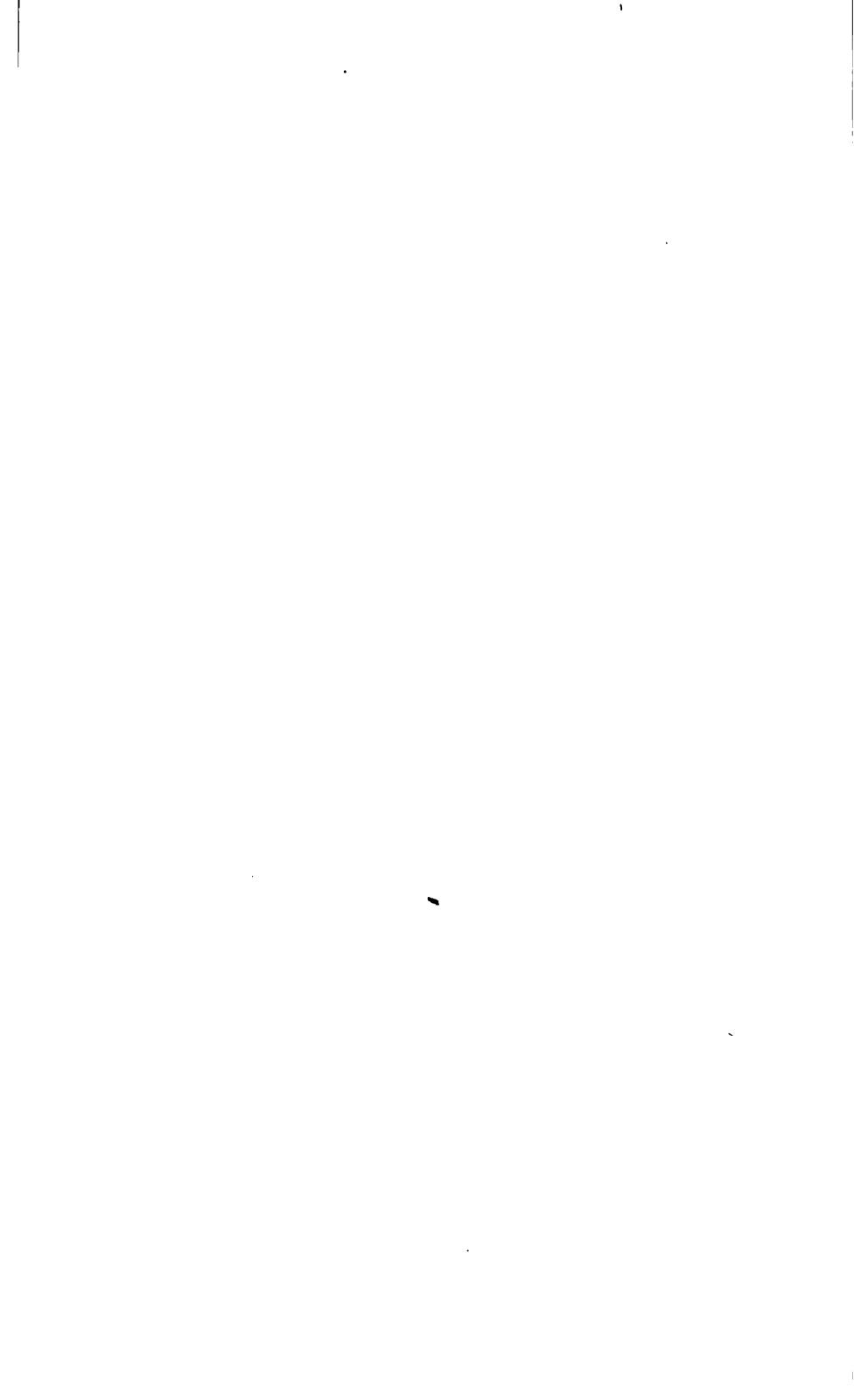
uses, and customs of all realms, in all causes which be called spiritual."

Then, after asserting the freedom of this country from the obligation of any Laws but such as had been made, or permitted to be promulgated, by the Legislature; the King and Parliament go on to declare in whom alone the Dispensing Power, claimed and abused by the Popes, resided:—

"It standeth, therefore, with natural equity and good reason, that in all and every such laws human made within this realm, or induced into this realm by the said sufferance, consents, and custom, your royal Majesty, and your Lords spiritual and temporal, and Commons, representing the whole state of your realm, in this your most high Court of Parliament, have full power and authority, not only to dispense, but also to authorize some elect person or persons to dispense with those, and all other human laws of this your realm, and with every one of them, as the quality of the persons and matter shall require; and also the said laws, and every of them, to abrogate, annul, amplify, or diminish, as it shall be seen unto your Majesty, and the Nobles and Commons of your realm present in your Parliament, meet and convenient for the wealth of your realm."

If words have any meaning, it seems here to be expressly asserted, That the people of this country ought to regard "Dispensations, Licences, and other infinite sorts of Bulls, Breves, and Instruments of sundry natures," as of no force and obligation, except as they had been, or might be warranted, not by the Pope or Sovereign personally, but by the three Estates of the realm in Parliament. Then, again, after enacting that neither the King nor his Heirs nor Successors, Kings of the realm, nor any of his Subjects any where, should sue to



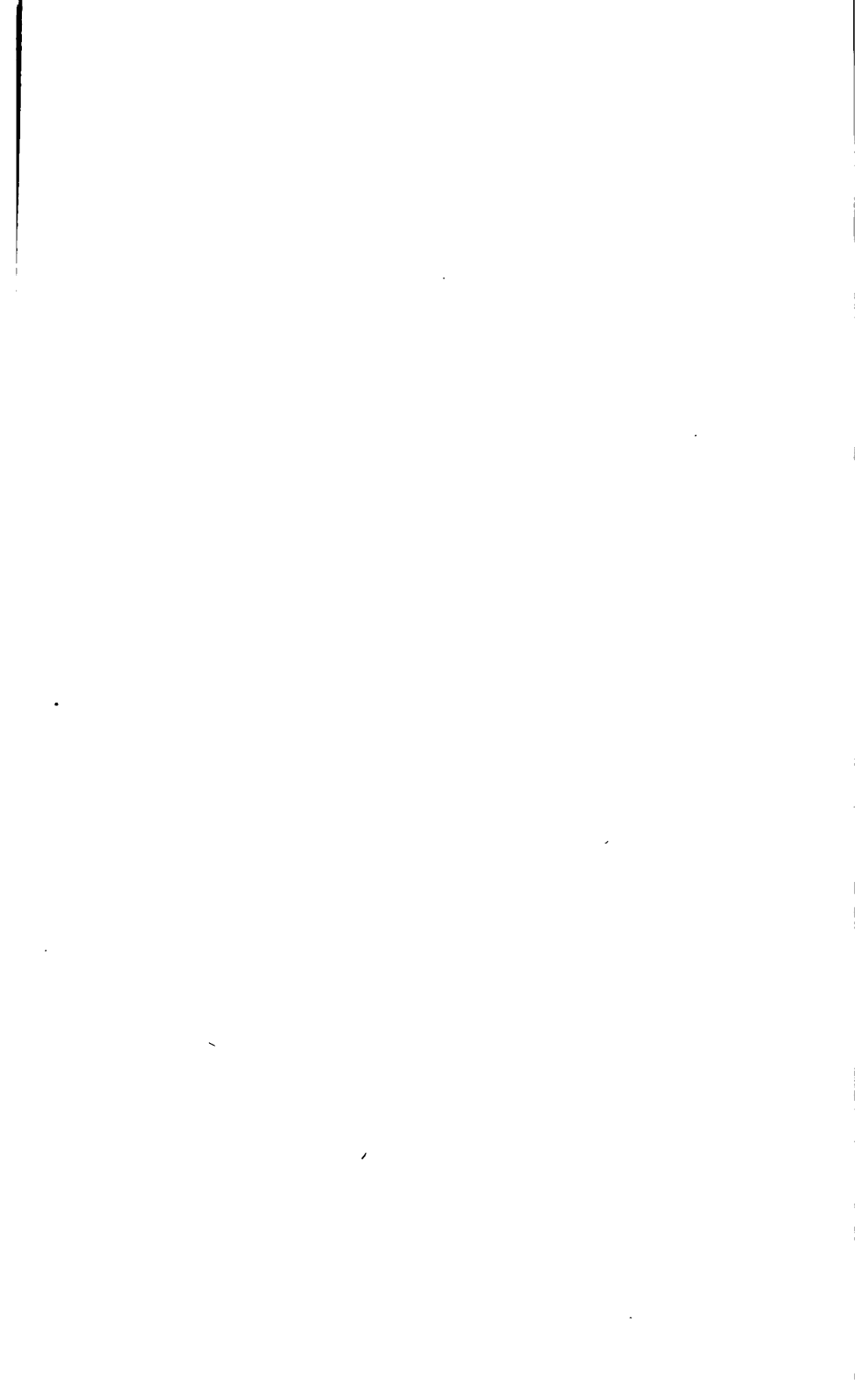


the Bishop of Rome, or to any person or persons having or pretending any authority, for licences, dispensation, &c. for any cause or matter for which any licence, dispensation, &c. had heretofore been used to be obtained from the Pope; the Statute goes on to decide by whom, and under what limitations such licences, dispensations, &c. should in future be granted. The Archbishop of Canterbury is, first, empowered to grant to the King, his Heirs and Successors, such licences, dispensations, &c. as the King, or any of his progenitors, or subjects, had been accustomed to obtain from the Pope; provided the causes for which such licences, dispensations, &c. were sought were not "contrary or repugnant to the Holy Scriptures and Laws of God." If, therefore, the Sovereign desired to be released from the obligation of any Canon, Statute, &c. with which the Pope formerly dispensed, he must now obtain a dispensation from the Archbishop of Canterbury. And, again, "all other licences and dispensations, in, for, and upon all such causes and matters," as might be "convenient and necessary to be had, for the honour and surety" of the Sovereign were still to be obtained from the Archbishop, so that they were not "repugnant to the law of Almighty God." The same authority was, further, delegated to the Archbishop, to grant such licences and dispensations to the King's Subjects, as heretofore had been obtained from the Pope. Only in such cases for which licences, dispensations, &c. were "unwont and not accustomed to be had or obtained at the Court of Rome," the Archbishop was restrained from granting a dis-

pensation until such dispensation had received the sanction of the King, or his Council. But we look in vain for the slightest allusion to there being any dispensing power in the Sovereign personally by virtue of his Prerogative; or to his deriving that power from this Act of Parliament. There would, in fact, have been no necessity for passing that Law, if the Power of Dispensing with Statutes and Ecclesiastical Laws had been a prerogative of the Crown, for every case for which this Act provides could have been disposed of by the Sovereign in his own person, as a matter of right inherent in him¹. Yet it is to be borne in mind, that among the licenees, dispensations, relaxations, &c. formerly "obtained at the Court of Rome," were those which related to the change or modification of College Statutes. If we did not, therefore, know how dextrously every shew of opposition to the Crown was, in times past, construed into an overt act of Treason, and forthwith punished as such, we might well be surprised to find how the power of dispensation, which, by a solemn act of the legislature, had been vested under certain limitations, not in the Sovereign, but in the Archbishop of Canterbury, should yet afterwards be attributed to the Crown personally, as a matter of inalienable prerogative. Yet the preceding pages have sufficiently shewn that such was the case: and it is believed that the Dispensing Power is still, to a certain extent, claimed for the Crown by the Prerogative Lawyers. In direct opposition,

¹ Atkyns, *Enquiry into the power of Dispensing*, &c. p. 21.





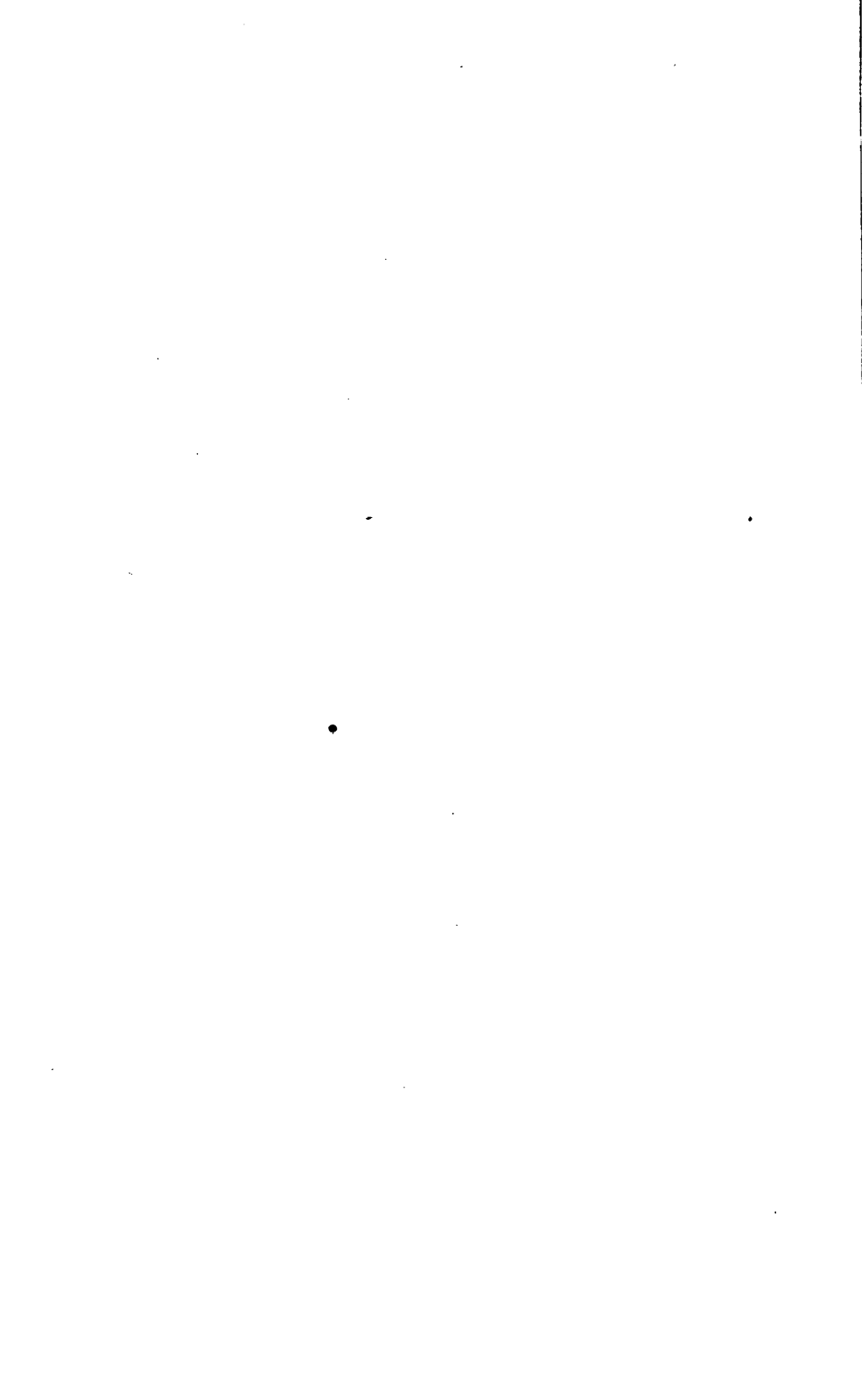
therefore, to the opinion of those who may be supposed to be well acquainted with the Law on this subject, it would be manifest presumption in the writer, to maintain that all those pretensions to the Dispensing Power which were formerly allowed to the Crown have now no legal existence; yet there can be no impropriety, it is hoped, in stating some reasons which seem to lead to such a conclusion. And in doing this, our attention shall be confined to the case of dispensing with University, or College Statutes; for about dispensing with the laws of the land there is no difference of opinion.

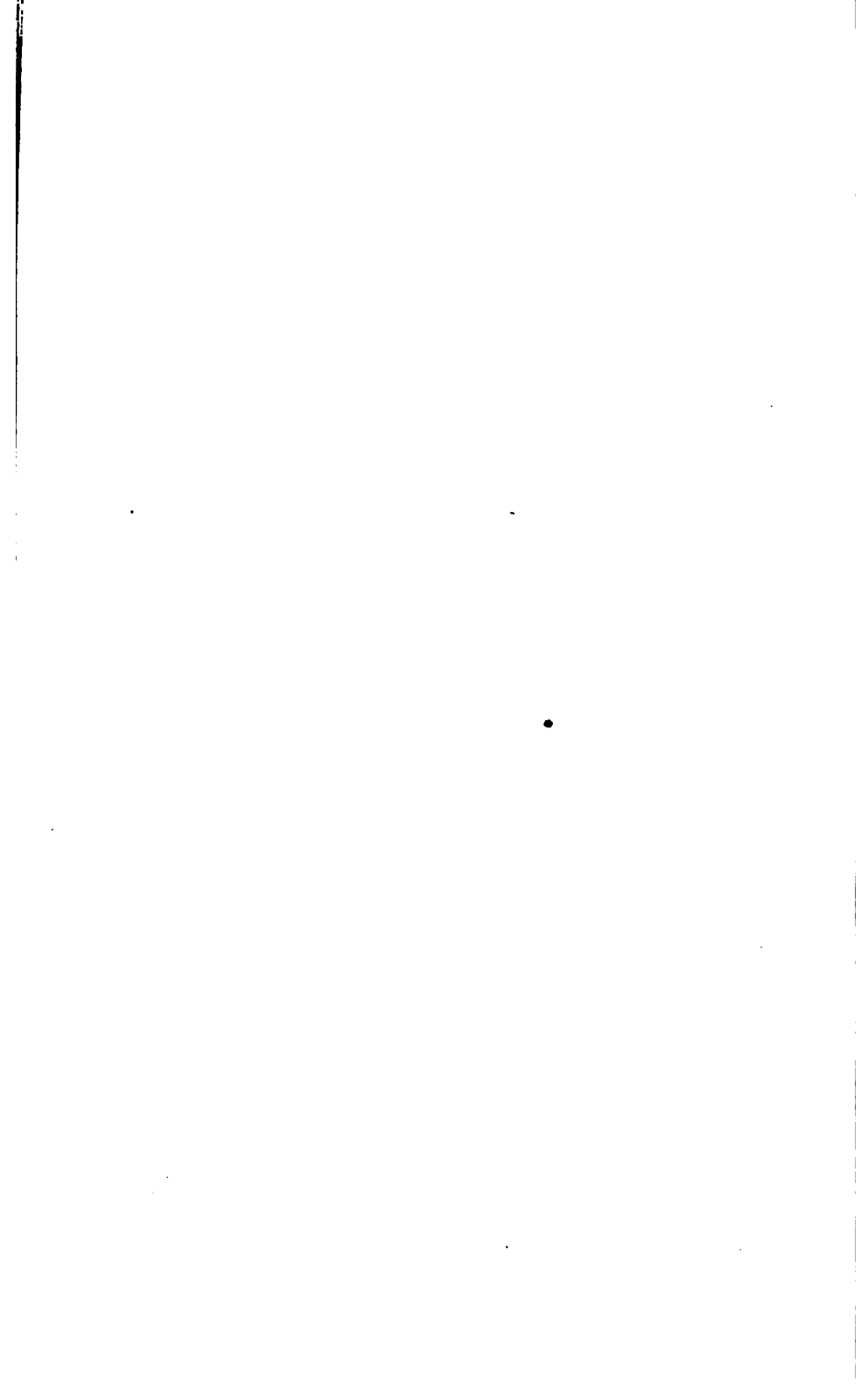
Let it be observed, then, that by the Bill of Rights it was decided, not only that the pretended power of dispensing with Laws by Regal authority as claimed generally, was illegal, but, also, that power, as it had "been assumed and exercised of late," by James II. But how was the power in question assumed and exercised by that Sovereign with regard to the particular case we have in view? He claimed the power to dispense with all College, and other Statutes, only as a kind of *à fortiori* appendage to that Prerogative which justified him in dispensing with the Laws of the land. But then he "assumed" that power only as it had been assumed by his predecessors on the throne. It was to legal arguments and decisions that had occurred in former reigns, that he expressly appealed; and, therefore, Chief Justice Herbert, in vindication of himself, confidently asserted, "We are not the inventors of the dispensing power: it has been allowed without controverſie, to the Kings of England in all

ages¹." So, also, in the "exercise" of that power by King James, he did not interfere with the Universities in any matter for which a precedent might not be found in the reign of Queen Elizabeth, or other of his predecessors. Some of his proceedings were certainly harsh, but yet not more so than some of those which we have had occasion to notice, as occurring in former reigns. Even his Mandatory Letter to Magdalene College, Oxford, which ended in consequences so disastrous to himself, was, *mutatis mutandis*, a mere transcript of Documents which were issued with unsparing abundance, by almost every preceding Sovereign, from Henry VIII. downwards. The charge, in fact, against James, was not that he pretended to more power in these matters than other Sovereigns had assumed, and exercised, in like cases, but that he arrogated to himself Prerogatives similar to those claimed by his Royal Predecessors, after the Laws had been repealed on which (it was maintained) the authority of those predecessors rested². The Act, therefore, which, without exception or reservation, declared the Dispensing Power as exercised by James II. to be

¹ *A short account of the Authorities in Law, &c.*, (1688). p. 37. The learned Judge must, of course, be understood to mean "in all ages" since the invention of Dispensations. That invention is attributed to Pope Innocent III.; who had also the merit of giving his *imprimatur* to the Doctrine of Transubstantiation.

² Stillingfleet, *Discourse concerning the illegality of the late Ecclesiastical Commission*. Letter to the Author of the *Vindication of the Proceedings of the Ecclesiastical Commissioners*, by Philonotus Anglicus. *The King's Power in Ecclesiastical Matters truly stated*. State-Tracts, Vol. II. p. 331.





"illegal and pernicious," involved, by unavoidable implication, every similar exercise of that power by former Sovereigns, in the same censure.

That such was the opinion of those who passed the Bill of Rights, seems to be clear from the proceedings of the Convention Parliament. When the Commons sent to the Upper House, a recital of King James's attempts against "the laws and liberties of this kingdom," they affirmed, as we have seen, that it was, among other things,

"By assuming and exercising a power of dispensing with and suspending of Laws, and the execution of Laws, without consent of Parliament."

The Lords, on the other hand, sent back that Clause amended as follows:

"By assuming and exercising a power of suspending Laws, and the execution of Laws, without consent of Parliament: and by such dispensing with Laws, as by consequence would subject all the Laws to his Will and Pleasure."

And the reason given for the amendment was, that

"such a general Declaration against the Power of Dispensing, may, in many cases, tend rather to the Prejudice, than the Benefit, of the Subject; because the validity of multitudes of Letters Patents, and Grants from the Crown, in the reigns of several Kings and Queens, do depend on *non obstantes*."

Here, therefore, we find the House of Lords expressly understanding, that the Declaration of the other House of Parliament, if agreed to, would impeach the validity of a multitude of those Acts of former Sovereigns, which could be considered

to be legal only on the supposition, that those Sovereigns possessed the Dispensing Power. But as among the Royal Acts, which depended for their validity on a *non obstante*, was the dispensing with College or University Statutes, the Declaration alluded to, as it was understood by the House of Lords, comprehended within its censure the exercise of that Royal Power which is put into requisition whenever those Statutes are dispensed with. Yet the House of Commons refused to concur in the proposed Amendment: and thus, whilst they admitted that the Declaration had not been misunderstood by the Lords, they proclaimed their intention that the Bill of Rights should declare the Dispensing Power to be illegal in all cases without exception, and, therefore, in all those in which it had heretofore been exercised. And, as if to put this matter beyond a doubt, a Clause was added to the Act of Parliament, which meets the objection that the House of Lords had urged. Yet, whilst by that Clause such Charters, Grants, or Pardons, as have been referred to, and that bore date earlier than October 23, 1688, were declared legal; the direct inference would seem to be, that all Royal Letters Patents, Grants, &c. which might be issued after that date, and which depended for their validity on a *non obstante*, would be "void and of no effect".

If, therefore the power to dispense with

¹ *Journal of the House of Commons.* 11 and 12 Feb. 1688.

² This Clause legalised the Dispensation granted by William III., which was noticed above (p. 85), and (as it seems to me) comprehends also the Statutes of the 12th of Elizabeth, if they before that time were really without legal sanction.



College and other Statutes be still a Prerogative of the Crown, the foregoing considerations would seem to require that that power should be made to rest on different grounds from those on which James II. and his Royal Predecessors rested their pretensions in that respect. Yet whilst one does not directly perceive from whence the Crown could now derive a precedent for granting a Dispensation, except from the Acts of those former Sovereigns, it is by no means manifest how those precedents can be used, if the authority on which their validity depended has been declared by the Legislature to be "illegal." Or if the exercise of the Royal Prerogative under discussion, can be warranted by other instances than those alluded to, still it is presumed, that it would be beside the point to plead any precedent that did not derive its validity, not from the Civil, but from the Ecclesiastical Supremacy of the Crown: for even James II. did not consider himself authorised to exercise the dispensing Power except in "Cases Ecclesiastical." But if this be so, it does not seem obvious how that Power could be legally exercised in matters that relate to the Universities and Colleges, since those Bodies are now regarded by the Law as Lay Corporations.

It would be superfluous to enquire into the power of the Crown to appoint Commissioners to visit the Universities, because that question seems to have been decided. One of the objects of the Ecclesiastical Commissions issued by James II. was to visit "the Universities;" yet as that, and "all other Commissions of a like nature," were then declared

to be "illegal and pernicious," our Institutions may be regarded as secure from the invasion of Royal Commissioners, so long as the Bill of Rights is suffered to remain unmutilated. And if in some future and evil hour, it should ever be attempted to force a Commission on the Universities, by an Act of Parliament, in the unreasonable expectation, that the fiat of the Legislature would at once absolve the Members of those Bodies from all obligation to adhere to existing Statutes, and statutable Oaths; we need not fear but there will be found many true-hearted men, who, strong in the right, will be equal to the emergency. It may not, however, be amiss briefly to examine the case of Royal Foundations; because they are usually regarded as differing materially from the foundations of private individuals, and as being more immediately subject to the interference and control of the Crown. Yet we do not seem to find this opinion corroborated, when we come to examine the circumstances connected with recorded instances of the Royal interference with the foundations in question. So early as the reign of Henry V. an Act was passed (2 Hen. V. c. 1.) which after reciting

"that many Hospitals had been founded by the Kings of this Realm, and divers other Estates of men and women, to which Hospitals the Founders had given part of their moveable goods and of their lands and tenements ... and that the goods and profits of the same ... had been withdrawn and spent in other uses;"

goes on to enact,

"That as to the Hospitals which be of the Patronage





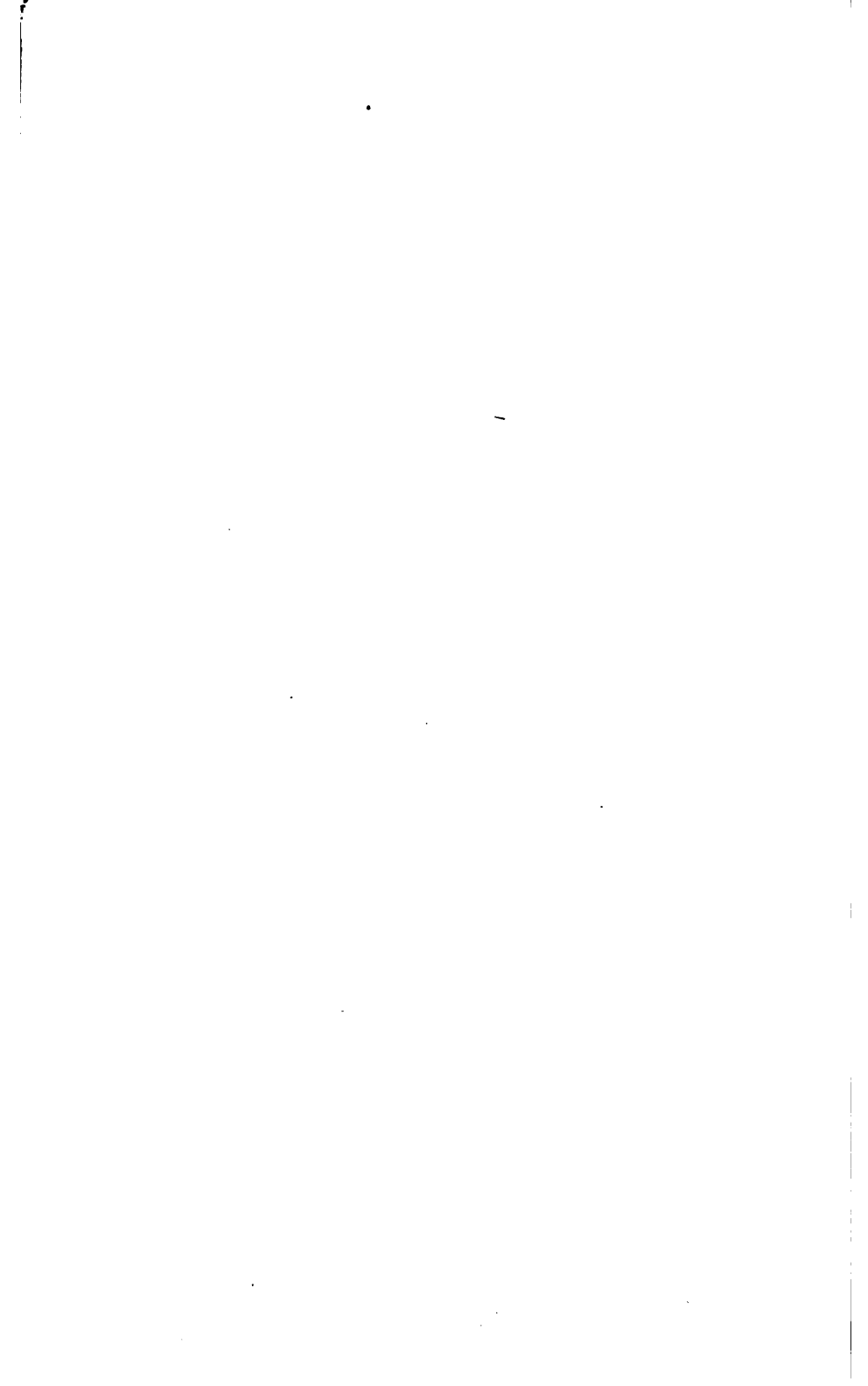
and Foundation of the King, the Ordinaries by virtue of the King's Commissions to them directed, shall enquire of the manner and foundation of the said Hospitals, and of the governance and estate of the same, and of all other matters necessary and requisite in this behalf; and the Inquisitions thereof taken, shall certify in the King's Chancery. And as to other Hospitals, which be of another Foundation and Patronage than of the King, the Ordinaries shall enquire of the manner of the Foundation, Estate, and Governance of the same, and of all other matters and things necessary in this behalf, and upon that make thereof correction and reformation, according to the Laws of Holy Church, as to them belongeth."

We have here, therefore, as it seems to the writer, a direct contradiction of the hypothesis that the Crown can, as a matter of course, visit and regulate any Royal Foundation; for though there is a difference made in this Act, as to the manner of Visitation, between Hospitals that are of the Kings' Foundation and Patronage, and those of the Subjects', yet the right to interfere in each case is conferred by the Act itself. Nor was this principle departed from in later times; for when certain Cathedrals and Collegiate Churches and Grammar Schools which Henry VIII. and Edward VI. founded, required correction and regulation, the Crown obtained Authority from Parliament to interfere. Thus we find an Act passed in the reign of Queen Mary (1 Mary, Sess. 2. c. 9.) reciting that Statutes given by Henry VIII. to certain Foundations were, from some informalities, of no force; but that authority to make those Statutes being conceded to Henry VIII. only for his own life, and not, also, to his Heirs and Successors, it

- became necessary to authorise the Queen to supply Statutes for those Foundations. Power was accordingly given to her Majesty for the specified purpose, but only for her natural life. Similarly authority was given to Queen Elizabeth on her accession, by 1 Eliz. c. 22., which enabled her to give Statutes to such "Cathedral and Collegiate Churches and other Ecclesiastical Corporations and Schools" as had been "created, founded, or ordained" by Henry VIII. Edward VI. Queen Mary, or Cardinal Pole. As regarded Elizabeth, indeed, the almost unlimited power in Ecclesiastical matters, that was conferred on the Crown by the Act of Supremacy, (1 Eliz. c. 1.) might seem to render the specific Act just mentioned superfluous, yet the passing of that Act served to shew, that, in those days of Prerogative, the Sovereign was not considered to possess the right to interfere with Royal Foundations as a matter of course. When, therefore, several years after this, Queen Elizabeth issued a Commission to empower certain persons "to ordain in her name all and singular the Ordinances, Rules and Statutes of all and every" the Royal Foundations mentioned above, the "altering making and establishing of the same and other Statutes" is only to be effected "according to an Act of Parliament thereof made in the first year of her reign¹." When, again, James I. issued a similar Commission in 1620, he does not interfere with those Foundations, except as authorised by the Act of Supremacy². The same occurs in the

¹ Strype, *Life of Grindal*, pp. 550, et seq.

² Rymer, *Fœdera*, Tom. xvii. pp. 200, et seq.



reign of Charles I.² And James II. when issuing the Commission which extended to the Universities, as well as to Cathedral and Collegiate Churches, pleaded the Authority conferred on the Sovereign by '1 Eliz. c. 1.⁴ Still later, when from certain causes doubts had arisen in the reign of Queen Anne, respecting the Validity of the Statutes of "divers Cathedral and Collegiate Churches founded by King Hen. VIII." the Sovereign was again obliged to receive authority from the Legislature "to alter, amend, correct, revoke, diminish or enlarge the said Statutes or any of them;" and that only "during her life." (6 Anne c. 21.) The particulars also connected with the passing of this Act, shew how little favour the notion, that the Crown, as a matter of right, could visit and regulate Royal Foundations, obtained in those days. For whilst the Bill was before the House of Commons, a petition was presented from one of the Prebendaries of Carlisle, praying to be heard by Counsel, on the ground, that if the Bill "passed into a Law," it would subject the Petitioner to the Visitation of the Bishop, whereas he was "informed the right of local Visitor was in the Crown:" and it was thereupon "Ordered...that the Petitioner be heard by his Counsel." But when, on the Order being read for the House of Commons to resolve itself into a Committee of the whole House upon the Act under consideration, it was moved,

1707.

² Rymer, Tom. xix. pp. 487, et seq.

⁴ *Vindication of the Proceedings of His Majesty's Ecclesiastical Commissioners*, pp. 5, et seq.

“That it be an instruction to the Committee to receive a Clause for preserving to the Crown, and the Queen, and her Successors, the right of local Visitation of those Churches which were founded by Henry the Eighth, to which no Statutes have been granted since that time;”

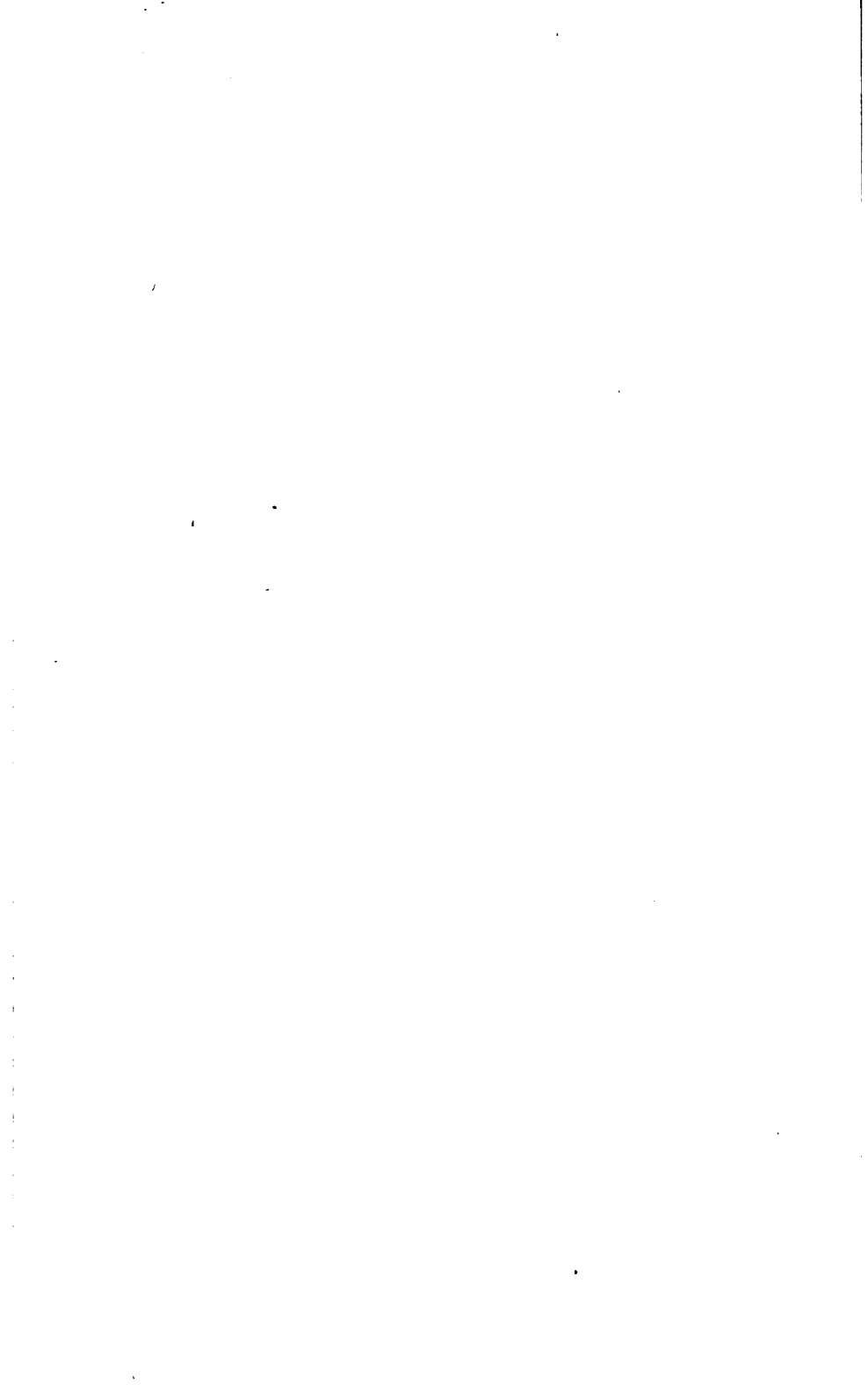
the motion was negatived¹.

1729. So, again, the case of the Collegiate Church of Manchester will afford an illustration of the control which the Crown has been considered to possess over Royal Foundations. This Church was suppressed at the Dissolution of the Monasteries, but re-founded by Elizabeth about 1572²: afterward it received a new Charter from Charles I. in 1635: then, after the confiscation of the Capitular property in the Commonwealth, it was re-established by Charles II:—yet, when occasion required, King George II. did not declare himself Visitor of this Foundation until he had received authority from an Act of Parliament (2 George II. c. 29.)³.

¹ *Journal of the House of Commons.* 3 & 9 March, 1707.

² *Strype, Parker*, Vol. II. pp. 10—12. *Dugdale, Ecclesie Collegiate*, p. 174. *Monasticon*, Tom. III.

³ When there exist so many examples on record of the jealousy with which Parliament has always guarded against the Crown taking upon itself to interfere with Cathedrals, one cannot but be surprised that the House of Commons should, so calmly, be permitted to arrogate to itself the right to appoint a Committee to examine into the management of Capitular property. That House forms but one branch of the Legislature, as the Crown does another; and there does not, therefore, seem to be any reason why the Commons should be allowed to assume a power which would be denied to the Crown. It is to be hoped, for the sake of rational liberty, that some of the Chapters will bring this matter to an issue.





These several Acts passed, with reference to Cathedral and Collegiate Churches and other Royal Foundations, may serve to shew that it will be necessary to ascertain the specific authority possessed by each Sovereign at the time, before much stress can be laid on such provisions in Royal Statutes, as, "We reserve to Ourselves and to our Successors full power and authority to change and alter, and, if it shall seem proper, to remodel these Statutes"⁴... "reserving, nevertheless, to Ourselves the power of adding, taking away, dispensing, or, if necessary, of enacting, and putting forth other and new Statutes". As a matter of fact, the Legislature decided three several times that Henry VIII. had power given him to make Statutes for certain Royal Foundations, during his own life only: he could not, therefore, devolve authority on his successors, "to alter, change, &c." the Statutes of the Church of Ely. So, again, though Queen Elizabeth had conferred on her, by the Act of Supremacy, full power to enact and put forth new Statutes for St John's College, as often as she pleased; it does not necessarily follow, that a succeeding Sovereign should possess that authority, after certain portions of the Act of Supremacy had been repealed: not to mention that the Statute, just quoted, does not allude, as those of Ely do, to the Sovereign's successors, but only to Queen Elizabeth herself. And well it is that it should be so, if the doctrine, just

⁴ *Stat. Cath. Ch. of Ely*, as quoted by Selwyn, *Are Cathedral Institutions useless?* p. 100, note.

⁵ *Stat. St John's Coll. Camb.* c. 50. See above p. 36.

promulgated with reference to this very Statute, is to be considered law, viz. that, "if such a power is reserved to the Crown, the Crown may make changes when advised to do so; and that, too, without its being necessary for the actual Corporation to assent to such a change¹." And yet it is by no means apparent why the assent of any Society should be necessary to such modifications of their Foundation as might seem to be expedient, if the Crown, as a matter of Law or Prerogative, really have the power to modify, annul, or dispense with their local Statutes. On the other hand, one does not perceive how, in the absence of express law, the assent of a Society could legalise, changes in their Foundation, which, without that assent, would be illegal. At the same time, if the mere concurrence of existing Corporations with the Crown, (i. e. with the minister of the day) be all that is requisite to give legal force to a change in the Statutes of our Universities, or Colleges, is there no cause to apprehend, that the possession of such a dangerous facility for remodelling the government of our Foundations, may, some time or other, be used to their perversion or ruin?

¹ *Second Publication of the Central Education Society, p. 29.*

THE END.



